92-1731

Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1992

No.

JACK P. JOHNSON, LINDA JOHNSON,

Petitioners,

v.

LOS ANGELES COMMUNITY
COLLEGE DISTRICT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL SECOND APPELLATE DISTRICT DIVISION ONE

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QUESTIONS PRESENTED FOR REVIEW

1.) When a federal question was raised and decided concerning an interest in a road across federal land, and the federal question is governing, may the California courts refuse to give effect to federal law and to a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947), which held that "The rule of lost grant to land applies to claims to land held adversely to the sovereign?"

2.) May the California courts give the effect of a statute to a quasi-dedication by the Los Angeles Community College District of land for an ecological reserve by an ad hoc committee of teachers, and take private property for the benefit of the ecological reserve, without compensation and without Due Process, in violation of Amendment XIV and Amendment V of the Constitution of the United States?

3.) May the state courts refuse to apply the rules of interpretation and construction of contracts, deeds and covenants in a uniform and consistent manner, and disregard a valid contract and make a new one for the parties, whereby private property is taken by means of an arbitrary and capricious misapplication of the rules of interpretation to a systematic misstatement of the factual record rationalized by subtle obfuscation of the record, in violation of the Due Process clause of Amendment XIV and of the taking without compensation clause of Amendment V of the Constitution of the United States?

4.) When the Los Angeles Community College District, pursuant to a 1908 road agreement in the chain of title, is a co-owner of a road, approximately half of which crosses the Angeles National Forest

and which the District is required to help maintain by covenants in the 1908 Agreement, does not federal law apply to the interpretation of the contract under the supremacy clause of Article VI of the U.S. Constitution? When the District seeks to repudiate the terms of the Agreement on the grounds that the U.S. Forest Service owns the road, is the District not required to name the U.S. Forest Service as an indispensable party, and where a state court purports to determine the rights of the parties, is not the United States an indispensable party such that the judgment resulting in the absence of the United States as a party is void? Does not federal law apply to the contract under the Supremacy Clause of the U.S. Constitution?

5.) When the state courts acquiesce in the taking of private property by the state without compensation or Due

Process, in violation of Amendment V and Amendment XIV of the Constitution of the United States, is the corrective power of the Supreme Court available to enforce the Constitution?

LIST OF THE PARTIES

(Rule 14.1(b))

The parties to appeal were: the petitioners Jack and Linda Johnson, husband and wife and tenants by the entireties of Gold Creek Ranch, plaintiffs; and, respondent Los Angeles Community College District, a public body, defendant and cross-complainant. (All cross-defendants, except the Johnsons, were dismissed in the trial court and were not parties to the appeal.) (The U.S. Government, which owns and maintains the Angeles National Forest across which the road in question runs for .7 miles, was not made a party, nor was it named as a defendant in either the complaint or cross-complaint.)

Because the petition challenges a state statute on constitutional grounds, and because a jurisdictional claim under the Constitution is made the effect which, if sustained, would impact 28 U.S.C Section

1257, both the attorney general of California and the solicitor general of the United States are both served with the petition pursuant to 28 U.S.C. Section 2403 (a) and (b), Rule 29 (b) and (c).

TABLE OF CONTENTS

Questions Presented For Review..... i

List Of Parties..... iv

Opinions Below..... 2

Jurisdiction..... 2

I. Raised And Decided..... 5

a. The Superior Court, Court Of Appeal, And California Supreme Court..... 6

b. The Court Of Appeal..... 10

II. The Court Has Inherent Jurisdiction..... 13

III. The Court Has Plenary Jurisdiction Over The Remaining Issues..... 15

Constitutions, Statutes and Rules Cited..... 16

Statute Involved..... 19

Statement Of The Case..... 20

If the Record Had Not Been Misstated by the Appellate Court, a Different Decision Would Have Resulted..... 46

The Decision Was Arbitrary..... 50

Reason For Granting The Writ..... 54

I.: California Courts Ignored Federal Law..... 54

II.: The Dedication Of The District's Property Took Petitioner's Property Without Compensation.... 56

III: The Decision Was Arbitrary and Capricious..... 58

IV.: The State Court Lacked Subject Matter Jurisdiction..... 62

V.: California Courts Must Apply the U.S. Consititution..... 63

Conclusion..... 65

APPENDIX:

Written Opinion Of Court Of Appeal

Oral Opinion Of Trial Court

Order Denying Rehearing

Order Denying Review By The California Supreme Court

Order Granting Extension of Time

Constitutions, Statutes and Rules Cited

Excerpt From Opening Brief In The Court of Appeal

Excerpt From Amended Complaint Filed On January 10, 1985 by Johnsons Against School District

Excerpt From Second Amended Complaint Filed May 14, 1985 by Johnsons Against School District

Second and Third Causes of Action

Road Agreement

Excerpts From Reporter's Transcripts

Claude Rucker: 1RT 112:4-19

Testimony of Laurel Woodley, District Gold Creek ad hoc committee

Testimony of Floyd Bodle, Johnson's predecessor in interest

CLARENCE JOE BROWN, commercial user of Bodle Ranch

DENNIS LEE, L.A.C.C. District custodian of records

JACK JOHNSON, Zoned Uses of property

Exhibits In Evidence

TABLE OF AUTHORITIES

Cases	Page
Agins v. City of Tiburon 24 Cal.3d 266, 598 p.2d 25 (1979).....	8
Armstrong v. United States, 364 U.S. 40, 805 S.Ct. 1563 (1960).....	8
Brooklyn Sav. Bank v. O'Neil (1945) 324 U.S. 697, 89 L.Ed. 1296, 65 S.Ct. 895.....	60
California Bldg. Co. v. Halle (1947) 80 CA.2d 229, 181 P2d 404.....	52
Carlson v. Washington (1914) 234 U.S. 103, 105.....	61
Chollar-Potosi Mining Co. v. Kennedy, 3 Nevada 861, 93 Am.Dec. 409.....	51
City of Los Angeles v. Coffee (1966) 243 Cal.App. 2d 121.....	29
Crescent City Live Stock Co. v. Butchers Union Slaughterhouse (1887) 120 U.S. 141, 30 L.Ed. 614 7 S.Ct. 47?.....	55
Davis v. Davis 222 Cal.App.2d 691, 35 Cal.Rptr. 281.....	47,51
East San Mateo Land Co. v. Southern Pacific Co. (1916) 30 CA 223, 157 P. 643.....	49
Eddings v. Oklahoma, 455 U.S. 104, 113-114, n. 9 (1982).....	7
Enterprise Irrigation District v. Canal Co., 243 U.S. 157, 164.....	44,59

First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304, 107 S.Ct. 2378, 2883, 2886..... 8,9,11

Hale v. Morgan (1978) 22 Cal.3d 388, 394, 149 Cal.Rptr. 375, 379..... 21

Heitz v. County of Sacramento, 87 Cal.App.3d 754, 757, n.2, 151 Cal.Rptr. 429, 430, n.2 (1978)..... 15

Horn v. Ocheskey, D.C.N.M. (1974), 378 F.Supp. 1280..... 62

Johnson Oil Refining Co. v. Oklahoma (1933) 290 U.S. 158, 78 L.Ed. 238, 54 S.Ct. 152..... 60

Ladner v. Siegel (1930), 148 A. 699, 298 Pa. 487..... 58

Lawrence v. State Tax Commission (1932) 286 U.S. 276, 282..... 61

Merchants Nat. Bank v. Richmond (1921) 256 U.S. 635, 638..... 60

New York, ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928)..... 7

O'Neill v. Spillane, 45 Cal.App.3d 147, 156, 119 Cal.Rptr. 245, 252..... 15

Reed v. Spicer (1864) 27 C 57..... 47

Reinman v. Little Rock (1915) 237 U.S. 171, 59 L.Ed.900, 35 S.Ct. 511 58

Retsloff v. Smith (1926) 79 CA 443, 249P 886..... 49

Shaffer v. Heitner 433 U.S. 186, 97 S. Ct. 2569 (1977)..... 15

Shelley v. Kramer, (1948) 334 U.S. 1, 68 S.Ct. 68 S.Ct. 836..... 61

U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287..... 19,22,29,46,54,55,62

Valdez v. Federal Mut.Ins. Co. (1969) 272 CA.2d 323, 77 Cal.Rptr 411..... 52

Vance v. Terrazas, 444 U.S. 252, 258-259, n. 5 (1980)..... 5

Ward v. Love County (1920) 253 U.S. 17, 22..... 61

Webb's Fabulous Pharmacies, Inc. v. Beckwith (1980) 449 U.S. 155, 66 L.Ed. 2d 358, 101 S.Ct. 446..... 53

Whitfield v. Ohio, 297 U.S. 431 (1936) 19

William v. Bruffy (1878) 96 U.S. 176, 24L.Ed. 716..... 58

Wolfe v. North Carolina (1960) 364 U.S. 177, 185, 80 S.Ct. 1482, 4 L.Ed. 2d 1650..... 59

Wright v. Goleta Water Dist. (1985) 174 Cal.App. 3d 744..... 29

Other Authorities

U.S. Constitution

Article I, Section 10 10,17

Article III, Sections 1 and 2..... 4,13,14,15,18

Article VI..... 13,18

Amendment V..... 7,8,9,11,15,18,53,58

Amendment XIV..... 8,15,18,53,58

California Constitution

Article I, Section 19..... 8,18

California Civil Code

California Civil Code Section 685..... 17

Section 1069..... 17

Section 1070..... 16,19,29

Section 1104..... 17

Section 1105..... 17

Section 3522..... 17

Statutes

28 U.S.C. Section 1257(a)..... 4,7

28 U.S.C. Section 2106..... 5,15

28 U.S.C. Section 2403..... v

Supreme Court Rules

Rule 14.1(b)..... iv

Rule 24.1(a)..... 5,15

Rule 29(a),(b)..... v

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PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION ONE

Petitioners, Jack and Linda Johnson respectfully pray that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal, Second Appellate District, Division One, which opinion was entered on October 23, 1992 and review of which was denied by the California Supreme Court on December 30, 1992.

OPINIONS BELOW

The opinion of the Court of Appeal is set out in the appendix hereto, p. 1, infra.

The oral opinion of the trial court (Hon. Thomas C. Murphy, Judge, Superior Court) is set out in the appendix hereto, p. 42, infra.

Neither opinion is officially reported.

JURISDICTION

Petitioners and respondent cross-complained to quiet title to an access road which crosses federal land and land owned by the Los Angeles Community College District and to determine their respective rights in and to the road under a 1908 deed in their respective chains of title. Each also sought damages from the other, relief denied both. Petitioners' complaint for damages sounded in inverse condemnation. A

permanent injunction against the petitioner (as more fully appears in the appendix, p. 42) was entered upon the trial court's quieting title in the respondent L.A.C.C. district. Other equitable relief was also granted. A finding that petitioners had a personal, noncommercial easement was also made. Petitioners represented themselves and claimed at trial that their property was being taken by the L.A.C.C. district, a political subdivision of the state, and that no competent authority had dedicated the property an ecological reserve.

Upon appeal, counsel objected to the trial court's opinion on the grounds that the court, retroactively, "condemned" petitioners' property without paying just compensation, a claim the Court of Appeal declined to discuss. Petitions for rehearing in the Court of Appeal and for further review by the California Supreme Court were respectively and summarily denied

by order without further opinion, in the Supreme Court by order dated December 30, 1992.

The motion for reconsideration argued that the court arbitrarily reached its decision, and rationalizes its decision, and did not reason from the facts, but rather assumed the facts to justify the decision (page 20 lines 18-28) which "scrapped" the Agreement (page 30 lines 7-11).

Justice O'Connor, by order dated March 15, 1993, extended the time to file the instant petition to and including April 29, 1993.

Jurisdiction of this court is claimed under Statute 28 U.S.C. Section 1257(a).

Inherent jurisdiction of this court is also claimed under the self-executing provisions of Article III, sections 1 and 2, U.S. Constitution.

Because the Court of Appeal's

opinion does not reflect the federal issues decided, the following is offered in aid of jurisdiction.

I.

Raised And Decided

Where a federal question is sufficiently raised, this court has jurisdiction over the entire case including issues not raised in the lower court. (Vance v. Terrazas, 444 U.S. 252, 258-259, n. 5 (1980).) Such rule finds itself codified in Rule 24.1(a), Plain Error, and in 28 U.S.C. Section 2106, granting the Court plenary power over any judgment "lawfully" before it. It appears the court exercises a quasi-pendent, plenary jurisdiction, or, simply, a plenary power (if the rule is merely prudential), where the federal issues are inescapable.

a.

The Superior Court,

Court Of Appeal,

And

California Supreme Court

The case was tried by Mr. Johnson himself, who is not a lawyer, but a professional in the motion picture business. Johnson claimed a co-ownership interest in the road across federal and state land, pursuant to a July 21, 1908 agreement in his and the District's chain of title. The thrust of the Johnson position, stated in the record passim and considered as a whole, was that the school district was taking his road to his 160 acre property by preventing maintenance of the road, and lawful uses he made of the road only after the district had "dedicated" its adjoining 240 acres to an "ecological preserve." Johnson's position was that the dedication took his property contrary to rights granted by deed and

contract in the joint claim of title. This position is implicit throughout the trial, and, in the language of Section 1257, that is what was "set up or claimed."

"[I]f the record as a whole shows either expressly or by clear intendment that [the assertion of the claim] was done, the claim is to be regarded as having been adequately presented." New York, ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928).) "Our jurisdiction does not depend on citation to book and verse." (Eddings v. Oklahoma, 455 U.S. 104, 113-114, n. 9 (1982).)

The Johnsons claimed in their complaint that their property was taken by inverse condemnation by the dedication of the school district's property as an ecological preserve. This is a claim which arises under the self-executing provision of the Just Compensation phrase of the Fifth Amendment made applicable to the states by

the Fourteenth Amendment and necessarily referred to a federal claim. (First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304, 315, 107 S.Ct. 2378, 2883, 2886, citing Armstrong v. United States, 364 U.S. 40, 805 S.Ct. 1563 (1960).)

No similar claim under the California constitution was cognizable when the complaint was filed. The state Supreme Court had held in 1979 that damages for inverse condemnation were not cognizable either under state or federal law. (See, Agins v. City of Tiburon 24 Cal.3d 266, 598 p.2d 25 (1979) which holds that while Amendment V and Article I, Section 19 of the California Constitution are in "concert," "a [landowner] may not... elect to sue in inverse condemnation and thereby transmute an excessive use of the police power into a lawful taking for which compensation in eminent domain must be paid." Ibid., 24

Cal.3d, a 273, 157 Cal.Rptr., at 375. As the Agins Court holds that, on the point, the U.S. and California Constitutions are merely in "concert," and not coterminous, it cannot be assumed that the later decisions of this Court recognizing a valid claim for damages under the Fifth Amendment for inverse condemnation automatically effected the same change under the California constitution, especially in the absence of California Supreme Court decision so holding. And it is for this reason, also, that the decisions below cannot be seen to rest on an "adequate" state ground.)

The complaint here was filed on August 10, 1984. This Court overruled Agins, supra, three years later in 1987 in First English Evangelical Lutheran Church, supra, an overruling which, however, could not reach Agins' holding on the California Constitution, leaving the bar of Agins under California law intact. Hence, the clear

claim that their property, their interest pursuant to a 1908 instrument in the road, a portion of which crosses federal land, was being taken could only have objective reference to federal law. Similarly, the claim, explicitly, repeated in the brief on appeal could, also, only have reference to federal law as no similar claim was cognizable under state law.

b.

The Court Of Appeal

As to the claims raised here that the court's opinion below violates the prohibitions against ex post facto laws and the Impairment of Obligations of Contracts found in Article I, Section 10, U.S. Constitution, the Federal claims arise as a result of the appellate court's arbitrary decision, and "disregard" of language having

centuries-old and settled meaning.

Some more recent guidelines have now issued from the California Supreme Court in a case reviewed and affirmed by this Court. In Fisher v. City of Berkeley, 37 Cal.3d 644, 654, n.3 (1984), aff'd., 475 U.S. 260 (1986), the court held that in reviewing injunctions, as here, the appellate court applies the law in effect as of the time of decision, whether raised or not by the parties. This has direct application here as it must be recalled that Agins, supra, held that no cause of action lay under federal or state constitutions for damages in inverse condemnation as of 1979. Hence, the Fifth Amendment cause of action could not have been raised by name when the complaint here was filed in 1984. Only when Agins was reversed by this Court in First English Evangelical Lutheran Church in 1987 could the federal cause of action be said to have viability. As the appeal was argued in

1992, where the question of unjust taking was again raised (as the appeal reviewed an injunction depriving petitioners' of their property), it must be clear under Fisher that the Court of Appeal had a duty to apply the constitutional law then in effect. The failure to do so, necessarily had the effect of ruling against the federal claim, whether raised at trial or not.

A cause of action for inverse condemnation was stated in the complaint. California procedural law allows the raising of a constitutional claim for the first time on appeal. The constitutional issue was specifically raised in the briefs on appeal. But even if it had not been, California would have required the Court of Appeal to apply the federal law existing at the time. The silence of the Court of Appeal on the federal issue must be seen as a rejection of it. The constitutional claim has been both pressed and passed upon as a matter of

federal law. Therefore, this court has jurisdiction.

III.

The Court Has Inherent Jurisdiction

By virtue of Article III, sections of 1 and 2, this Court has the inherent jurisdiction, unaided by statute, to review all cases in law or equity arising under the Constitution or the laws of the United States. Section 2 explicitly states that federal judicial power shall extend "to controversies to which the United States shall be a party..." In conjunction with the Supremacy Clause of Article VI, by virtue of which the Constitution and laws of the United States bind state court judges, the issue arises as to whether the failure of the L.A.C.C. District to join the United States as an indispensable party deprived

the state court of subject matter jurisdiction. The road to which the court quieted title traversed the Angeles National Forest, operated by the U.S. forest Service, for .7 miles. But the Forest Service was not joined, and it is, therefore, unclear how the court's decrees could affect its rights in the road which crosses, or is surrounded by, federal property. What is the federal government's interest, if any?

The Supremacy Clause requires that federal law be applied no matter how or where it arises, and Article III would seem to say that this Court not only has the jurisdiction to decide the issue, but must so decide it under the Supremacy Clause, because that clause is mandatory (using the verb "shall").

An indispensable party is one whose absence prevents the court from rendering any effective judgment between the parties because subject matter jurisdiction is lost.

The United States was not given notice as required by Shaffer v. Heitner 443 U.S. 186 (1987). Issues of jurisdiction may be raised at any time under both systems. (See, Heitz v. County of Sacramento, 87 Cal.App.3d 754, 757, n.2, 151 Cal.Rptr. 429, 430, n.2 (1978); O'Neill v. Spillane, 45 Cal.App.3d 147, 156, 119 Cal.Rptr. 245, 252.)

IV

The Court Has Plenary Jurisdiction Over The Remaining Issues

This Court has jurisdiction over the claims raised under Amendment V and XIV, and Article III, and has jurisdiction over the entire case, including the other constitutional issues stated. 28 U.S.C. Section 2106. All other stated issues can be reached under the plain error rule of this Court. Rule 24.1(a).

Constitutions, Statutes and Rules Cited

The text of the provisions are set out verbatim in the appendix. For the Court's convenience, they are paraphrased here.

1.) California Civil Code Section 1647: Contracts explained by circumstances.

2.) California Civil Code Section 1641: Effect to be given to every part of contract.

3.) California Civil Code Section 1644: Words to be understood in usual sense.

4.) California Civil Code Section 1638: Intentions to be ascertained from language.

5.) California Civil Code Section 1636: Contracts, how to be interpreted.

6.) California Civil Code Section 1070 states where several parts of a grant are irreconcilable, the former

prevails.

7.) California Civil Code Section 1105 provides that a "grant" is presumed to be a grant of a fee simple.

8.) California Civil Code Section 1069 provides that a deed is to be construed in favor of the grantee.

9.) California Civil Code Section 1104 provides that appurtences to land conveyed pass by operation of law, without mention.

10.) California Civil Code Section 685 provides that tenants in common owe each other a fiduciary duty not to oust the other from use and enjoyment of the property.

11.) California Civil Code Section 3522 provides that one who grants a thing is presumed to grant whatever is essential to its use.

12.) Article I, Section 10, U.S. Constitution provides no state

shall pass an ex post facto law or a law impairing contracts.

13.) Amendment V, U.S. Constitution, provides no state shall take property without paying just compensation.

14.) Article III, Sections 1 and 2 vest this Court with jurisdiction with the judicial power extending to all cases of law and equity arising under federal law and in controversies in which the United States shall be a party.

15.) Article VI, U.S. Constitution, provides that the Constitution and laws of the United States is the supreme law of the land binding state court judges.

16.) Amendment XIV, U.S. Constitution, provides that no state shall deprive a person of property without Due Process of law nor deny any person Equal Protection of the Laws.

17.) California Constitution, Article I, Section 19 provides that private

property may be taken or damaged only when just compensation has been paid.

18.) California Code of Civil Procedure Section 1060 provides that, in a declaratory judgment action, Court may make a binding declaration of the parties respective rights and duties.

Statute Involved

A California Statute, Civil Code Section 1070, was given effect in direct conflict with a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287, to which the state court refused to give effect. See 3RT 677:3-28, 673:1.

Statement Of The Case

In 1984, the District objected to the Johnsons' use of the road for purposes of profit, and objected to the Johnsons' maintenance of the road, claiming that the use and maintenance of the road interfered with its dedication as an ecological reserve, a dedication which had not yet been made when the Johnsons took possession in 1974.

The Johnsons filed a complaint after the dispute had become intolerable, in the Superior Court in 1984 seeking to quiet title, declaratory and injuncitive relief and damages. The District filed a general denial, and cross-complained for quiet title, trespass, injunctive relief and damages and disclaiming the obligations to help maintain the road across U.S. land, a position contrary to the terms of the 1908 Agreement, but failing to name or serve the U.S. government as an indispensable party.

The Johnsons' complaint alleged that the District is attempting "to violate plaintiff's property rights and rights incidental to ownership of plaintiff's property." (1CT 37, paras. 14 and 15; Appendix.)

The case turned upon the interpretation of a July 21, 1908 Agreement in the chain of title which conveyed rights and interests in a privately owned road, Gold Creek Road, which crosses federally owned land, the Angeles National Forest, for .7 miles, and which leads to and across land owned by the Los Angeles Community College District, a subdivision of the State of California, and which ends on the 160 acres of land owned by Jack and Linda Johnson. (Exhibit 2, see Appendix).

The 1908 instrument was executed by private parties who were the earliest predecessors in interest, now long deceased.

Robert Scott Watt, first party, the grantor, was the District's original predecessor in interest. Edward D. Silent, et al., were the Johnsons' original predecessors and the grantees.

The 1908 Agreement recites that the first party built the road in 1902, and that it was a private road, to and on the land of the first party, and that all rights in the road were vested solely in the first party, who used, maintained, and gated the road. The first party granted an undivided 1/2 interest in the road to the second party.

The first party's rights in the road across federal land are governed by federal law pertaining to the acquisition of property, and in particular by U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287, which held that "The rule of lost grant to land applies to claims to land held adversely to the sovereign."

Johnson cited U.S. v. Fullard-Leo

(1947) in closing arguments at trial. "The rule of lost grant to land applies to claims to land held adversely to the sovereign."

At trial, Jack Johnson testified that the 1908 Agreement incorporated U.S. Government Surveys by reference into the document, and he cited the 1908 instrument's reference to Section Twenty Three (23), Twenty Four (24) and Twenty Six (26) in Township Three (3) North, Range Fourteen (14) West, San Bernardino Meridian.

Johnson cited and introduced into evidence U.S. Department of the Interior Surveys and U.S.G.S. Topographical Maps which identified the road and the subject land, for all years, beginning in 1900, and which show that the road was already in existence and ended 1/4 mile inside the second parties' land in Section Twenty Four at the time of the 1908 Agreement.

Johnson also entered into evidence a map produced by the U.S. Forest Service, Map

No. 137-4C, which is a U.S.G.S. Sunland Quad. Topo. Map modified by the U.S. Forest Service and which shows the boundaries of the subject properties, and which shows the road crossing the U.S. land and the L.A.C.C. District land and ending on the Johnsons' land.

The various Government Maps and Surveys, beginning with the 1900 edition of the U.S.G.S. Sunland Quad. and San Fernando Topo. Maps of the area, all show the road as having been in existence since 1900, as the one and only road to and on these properties, from 1900 until the present.

The relevant U.S. Surveys, Maps, Field Notes, and related documents were all admitted into evidence and were uncontroverted. CT Exhibits No. 40, 39, 4, 3, 6, 5.

The original parties to the 1908 Agreement all having been long deceased, Johnson presented extrinsic evidence to show

the circumstances of the parties and the history of the road.

Because of the road's location, in close proximity to Gold Creek, the road is subjected to heavy damage from the forces of nature, and the flash-flooding of Gold Creek, from time to time. As a result, the road has been reconstructed and rebuilt several times throughout its history. Robert Scott Watt, the first party to the 1908 Agreement, rebuilt the road in 1902.

Johnson's position was that pursuant to the 1908 Agreement, the L.A.C.C. District and the Johnsons each owned an undivided 1/2 interest and other interests in the road which led across U.S. land and across District Land, and which ended on Johnson's land, and that the Johnsons and the District were co-owners of the road.

The District called a representative of the U.S. Forest Service, Mr. Steven Bear, the acting District Ranger, Angeles National

Forest, to testify to the effect that the U.S. Forest Service owned the road across Forest Service land.

In an exchange with the Court, while cross examining Steven Bear, Johnson claimed an ownership interest in the road across the National Forest.

STEVEN BEAR (called as a witness by L.A.C.C.) DIRECT EXAMINATION 2 RT 318: 5-21:

Q. Does the U.S. Forest Service have an interest in Gold Creek Road?

A. The part that's on National Forest, yes, we do. We manage that road.

Q. Mr. Bear, on occasion have you come to know Mr. Johnson by reason of his activities on the road?

A. Yes, I have.

Q. What is your familiarity with Mr. Johnson's activities on the road?

A. Mr. Johnson worked on the road with heavy equipment without Forest Service permission.

Q. Was that on the portion of the road belonging to the Forest Service?

A. Yes.

CROSS EXAMINATION (by Mr. Johnson) 2 RT 325: 1-18:

MR. JOHNSON: I would like to ask Mr. Bear if the Forest Service, or their attorneys and officers, received a letter from me to the effect that I have an ownership interest in that road.

THE COURT: You claim an ownership interest.

MR. JOHNSON: Yes, sir. I claim an ownership interest.

THE WITNESS: I believe we do.

THE COURT: The issue in this case is whether you have a right of way, whether you have a fee simple, whether you have anything by virtue of grant deed, or did you, by agreement, have an easement for certain use of the road, both sides. Now that's the issue in this case. So let's proceed.

JOHNSON: Very well.

Q. Then you do have a letter that I claimed an ownership interest to that effect?

A. I believe we do.

The district disclaimed any interest or obligation pursuant to the 1908 Agreement in that .7 mile portion of the road which crosses Angeles National Forest land and leads to District property. The District claimed an easement in that portion of the road, independent of the 1908 Agreement, and in contradiction to the terms of the Agreement.

Johnson's position was that in light of the uncontroverted evidence and the recitals in the 1908 Agreement, the .7 mile portion of the road leading to the District property began at the Brown Ranch, and proceeded across National Forest land to the District's Western boundary, in Section

Twenty Three, as recited in the 1908 Agreement, and as shown on all the U.S. Topo Maps and by all the testimony.

When the district stated in closing that adverse possession could not be a means of acquisition of publicly owned land, and relied on State law, Calif. Civil Code Section 1070, as interpreted by two state court decisions, Wright v. Goleta Water Dist. (1985) 174 Cal.App. 3d 744, and City of Los Angeles v. Coffee (1966) 243 Cal.App. 2d 121, Johnson replied as follows: "Your Honor, we would respond by citing U.S. v. Fullard-Leo, a U.S. Supreme Court case that held that the rule of lost grant to land applies to land held adversely to the sovereign." 3RT 672: 24-28; 673:1-2.

The District claimed to have dedicated the District property an ecological reserve at some time after 1972, although they were unable to produce any kind of documentation relating to a formal dedication.

Johnson argued that no competent authority had ever dedicated the District property an ecological reserve. 3RT 673:7-9; 2 RT 306:21-28.

The District contended that the road was a part of the ecological reserve, and that the Johnsons could not maintain the road without District permission, and that the road must be kept in a natural condition.

The District further contended that the Johnsons did not have the right to use the road for commercial purposes, or for profit.

The Johnsons' position was that the parties were co-owners of the road with equal rights and obligations in the road, and that in any case, the rights granted in the 1908 Agreement were broad and unrestricted.

The extrinsic evidence demonstrated that all the parties and successors in

interest to the 1908 Agreement had used both properties and the road for income producing purposes for all years since 1902, and that even the District had done so for twenty consecutive years, from 1950 through 1972.

The record shows the commercial history of the subject properties and the road is as follows:

The properties are located in the Little Tujunga Mining District and are zoned A2-5 by Los Angeles County.

The A2-5 zoning is heavy agriculture, and the zoning liberally permits non-agricultural uses, such as clubs, campgrounds, motion picture production, and over 100 other non-agricultural activities for profit.

There is uncontroverted testimony concerning the zoning, which was admitted into the record without objection, Jack Johnson 1RT 20:20-28; 21:1-24 CT Exhibits 1, 6 and C.

The zoning is shown on documents admitted in evidence.

The zoning was not disputed.

As to the actions of the long deceased parties to the 1908 Agreement, the only evidence was that introduced by Johnson, the 1902 U.S. Department of the Interior Survey No. 52 182 which surveyed the area and which showed the vineyards of Robert Scott Watt. CT Exhibit No. 3.

Uncontroverted testimony at trial established that the Watt brothers, R.B. Watt and A.B. Watt, the sons and successors in interest of Robert Scott Watt, first party, and the predecessors in interest of the District, used their land and the road for the production of income and for profit, and they earned their livelihood thereby, from year to year, up until 1950, when they sold their land to the District. Floyd Bodle 1RT 209:21-28; 210:1-18; see Appendix.

From 1950 through 1972 the District

leased its property to private parties, a Mr. Archer and a Mr. Witchell, for a fee and other valuable considerations. In addition to the fee, the lessees were required to provide a caretaker for the property and to keep the water lines and fences in repair. Dennis Lee, the District's custodian of records, so testified. Dennis Lee 2RT 252:13-15; 252:28; 253:1-23; see Appendix.

Floyd Bodle, a successor in interest of the second parties to the 1908 Agreement, and the predecessor in interest of the Johnsons, used his property for the production of income.

Floyd Bodle used his property for the commercial production of honey, and employed a beekeeper in the 1930's and the 1940's. Floyd Bodle 1RT 217:14-22; 219:28; 210:1-11; see Appendix.

Floyd Bodle also had a business arrangement with Clarence Joe Brown, whereby Bodle permitted Brown to graze cattle at the

Bodle Ranch for purposes of profit, and Brown received fees from hunters, hikers and campers who used the Bodle Ranch. Clarence Joe Brown 1RT 190:2-14; 198:1-9; see Appendix.

The Johnsons purchased the Bodle property in 1974 and named it Gold Creek Ranch. The Johnsons used the 160 acre property for income producing purposes from 1974 forward, renting to private groups as a campground, and for motion picture filming, etc.

In 1972 the L.A.C.C. District stopped leasing their property for profit. An ad hoc group of teachers had become interested in using the property, and the District allowed them to do so. This ad hoc group of teachers called themselves the Gold Creek Committee and they claim to have dedicated the District property as an ecological reserve, and they claimed that the Johnsons' rights to use and to maintain

this road are restricted by reason of this dedication. Laurel Woodley, see appendix, 2RT 439:21-25; 444:1-6.

No documentation of any kind was produced at trial to support the claim that the property was dedicated an ecological reserve by any competent authority.

Johnsons' position was that just because an ad hoc group of teachers were permitted to use the District property for occasional study purposes, beginning after 1972, this did not constitute a dedication of the District property by any authority competent to take the road and include it as an ecological reserve and thereby diminish his rights to use and maintain the road.

In closing, Johnson argued that the District had not demonstrated that their property had ever been dedicated an ecological reserve by any competent authority.

As pointed out in Johnson's opening

Appellate brief, for the District to argue a dedication of their property the effect of which is to eliminate the lawful uses of the Johnsons' property is to effectively condemn the Johnsons' property without paying just compensation. (p. 24:5-8) The effect is both retroactive and confiscatory. (p. 27: 27-28).

When rendering his decision on the quiet title issue, the trial judge stated: "The Court knows the intentions of the parties in any agreement are important. I've heard those intentions."

"...when you have evidence from the parties that there was no commercial intent in this, it was more or less a place for the Bodles and others to go and rest and relax, and if they could get some honey from the wild bees and make, as he referred to, a dollar, he would do so. But this does not permit either the community -- nor does it permit you to open a road for public use,

turning them into camp sites, turning them into weekend resorts. It has to be kept in the position that it was in the wild-life period. It may hurt some people. That's fine. But it will have to go along with that particular consent of the parties."

"With reference to the quiet title, Gold Creek Ecological Reserve is going to be used as an instructional, training and natural science by the students and faculty. That's their purpose and any change in purpose in that would have to be effected in some other manner." 3RT 677: 21-28; 678: 1-10.

The Court also ruled that the Johnsons may not maintain the road without District permission.

The trial court gave to the quasi-dedication the force and effect of an enactment of the State, and took private property for the benefit of the ecological reserve by misstating the actions of non-

parties as grounds for discarding a carefully worded fourteen paragraph agreement containing grants and covenants running with the land.

The trial court confused the successors in interest with the original parties to the 1908 Agreement who were long deceased. The trial court then misstated the record as to the actions of these successors in interest, all of whom had made commercial use of their properties, including the District itself.

The 1908 Agreement was simply disregarded in its entirety, for the benefit of the ecological reserve.

Floyd Bodle was not a party to the 1908 Agreement, and the courts misstated the record. Floyd Bodle was the third successor in interest in the chain of title of the first party, and his rights are pursuant to grant; Bodle used his property for the production of income. Even if he had not

done so, rights pursuant to grant are not lost by nonuser.

Both Bodle and Brown used the Bodle property for commercial purposes.

The record also shows that the District property was used for profit for twenty consecutive years, from 1954 to 1972.

The District's predecessors R.B. Watt and A.B. Watt, the sons and successors in interest of Robert Scott Watt, first party, and the predecessors in interest of the District, used their land and the road for the production of income and for profit, and they earned their livelihood thereby, from year to year, up until 1950, when they sold their land to the District.

The Appellate Court affirmed the Superior Court's judgment, and doing so based its ruling on 16 obvious misstatements and obfuscations of the record.

The judgment was entirely arbitrary,

devoid of evidentiary support, contrary to the record, and contrary to applicable rules of law. The Court made misstatements and obfuscations of the record, rationalizing the arbitrariness of the decision.

A motion for reconsideration, which listed the Court's misstatements of the record, was denied.

The motion for reconsideration argued that the court arbitrarily reached its decision, and rationalized its decision, and did not reason to a conclusion from the facts, and that the agreement was "scrapped" by the court.

The California Supreme Court refused to review the decision.

The California courts systematically misstated and obfuscated the record, and arbitrarily rendered a decision contrary to the evidence and applicable law, thereby taking private property for the "ecological reserve" without Due Process, disregarding a

carefully worded fourteen paragraph contract, and refusing to give effect to a decision of the U.S. Supreme Court.

The rules of interpretation being extremely flexible, the facts in a given case will influence the application of the rules of interpretation.

The Appellate Court misstated the record over 16 times in its opinion, and rationalized an arbitrary misapplication of the rules of interpretation, thereby eviscerating a contract and taking property for the state in violation of Due Process.

The Appellate Court stated, as grounds for affirming the Superior Court judgment, that the Johnsons' rights in the road were restricted by grant because the road was privately owned, and by the misstated conduct of the Johnsons and of the District's predecessors in interest, Floyd Bodle, and Arthur and Robert Watt, who, the court stated, used their land for "mostly"

non-commercial purposes.

Floyd Bodle, and Arthur and Robert Watt were not parties to the 1908 Agreement. Floyd Bodle was the third successor in interest in the chain of title of the second parties.

Arthur and Robert Watt were the third successors in interest in the chain of title of the first party.

These predecessors in interest were not parties to the 1908 Agreement - their rights were pursuant to grant.

The Appellate Court also mis-characterized the road, as an unpaved dirt road.

The road has been repeatedly paved with liquid asphalt and concrete by all the parties in the chain of title from time to time throughout its history. (Dennis Lee 2RT 371:20-28; 372:1-3, Appendix p. 97; Floyd Bodle 1RT 215:24-26).

The Appellate Court confused

proposed improvements to the road, mentioned in a memo which did not discuss or mention maintenance, with maintenance, and then the Court misstated the testimony concerning maintenance. Floyd Bodle testified that he never asked the District's permission to do maintenance, and that he alone maintained the road for many years. (Floyd Bodle 1RT 216:28; 217:1-5; see Appendix p. 92) Dennis Lee, the District Custodian of Records, testified that the District had no request from Bodle to do maintenance in its files, and no request from the Johnsons. (Dennis Lee 2RT 371: 7-14; see Appendix). The Appellate Court demonstrated an inability to distinguish between improvements and maintenance. The memo did not even relate to maintenance. Floyd Bodle's rights to maintain the road are pursuant to grant and are explicitly stated in the instrument as the right to maintain the road "at all times"; paragraph 5, 1908 Agreement.

The Appellate Court obfuscated the record relative to the zoning of the properties, and said that the record is silent concerning the zoning.

The record is not silent concerning the zoning.

Documents showing the zoning are in evidence, and uncontroverted testimony concerning the zoning is in the record and unobjected to, which establishes that the zoning is A2-5, and liberally permits for profit use, including campgrounds.

The zoning was not in dispute.[1]

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[1]The District never disputed the fact that the zoning is A2-5. In addition to the documents and uncontroverted testimony in evidence, the Johnsons filed an unopposed motion for judicial notice which included the zoning code A2-5, on 1-9-90, on which the trial court issued no ruling, the effect of which is to grant the motion under Calif. Evidence Code Sect. 456 which provides that if the trial court denies a request to take judicial notice of any matter, the court shall advise the parties and indicate for the record that it has denied the request. The trial court did not so indicate a denial, and the request for judicial notice is granted under operation of Section 456.

The Appellate Court stated, contrary to the uncontroverted record, that the road did not extend to the second party's property in 1908.

The documented record show that the road did extend to and end within the second party's land in 1908. CT Exhibits 40, 39, 4,3,6,5.

The California Courts completely ignored the fact that approximately half of the road crosses federal land when rendering their decisions.

The California Appellate Court made the amazing comment that a privately owned road cannot be used for commercial purposes.

The road is <u>private property</u>, which may be used for all reasonable purposes, including for profit.

If the Record Had Not Been Misstated by the Appellate Court, a Different Decision Would Have Resulted

1. The 1908 Agreement recites that the first party built the road in 1902, and that it is a road leading to and on the lands of the first party.

2. That portion of the road leading to the first party's land is across U.S. Government land, the Angeles National Forest.

3. The instrument recites that the road is a private road, and that all rights in the road are vested solely in the first party, who built the road, used the road, maintained the road, and who maintained a gate on the road.

4. The instrument, in its recitals, sets forth all the elements required to acquire title to the road across U.S. land pursuant to U.S. v. Fullard-Leo (1947) 67 S. Ct. 1287.

5. The instrument recites to the effect that the first party owns the road and can convey an interest in it.

6. For a valuable consideration, equal to the value of the fee, the first party conveyed an undivided 1/2 interest in the road to the second party.

7. The effect of the conveyance of an undivided 1/2 interest forever by the owner of the fee is to make the parties co-owners of the fee, each holding an undivided 1/2 interest as co-tenants in the road. (Davis v. Davis 222 Cal.App.2d 691, 35 Cal.Rptr. 281; Reed v. Spicer (1864) 27 C 57.)

8. The fourteen paragraph instrument provided for joint and unrestricted rights to use the road at all times, and to maintain the road at all times, and the instrument explicitly states to use "at all times" and to maintain "at all times."

9. The Agreement also provides, by

covenants which run with the land, that the parties will share equally the costs or work of maintaining the road, and that the road shall be kept in repair.

10. Since the grant is broad and unrestricted, and the rights of successors in interest are pursuant to grant, and not to the misstated action of any non-party to the Agreement, and since the record shows that all successors in the chain of title, including the District, all made commercial use of the road, the Johnsons have the right to use the road for all reasonable purposes, and for profit.

In construing a deed every provision, clause and word shall be taken in consideration in ascertaining meaning of the grantor, whether words of grant, of description, or words of qualification, restraint, exception or explanation, and every word shall be presumed to have such

force and effect as it can have. East San Mateo Land Co. v. Southern Pacific Co. (1916) 30 CA 223, 157 P. 643. (Civil Code 1638.)

Various terms of a contract will be harmonized if possible, and if there is any ambiguity in its language, or any apparent conflict between its different clauses or provisions, circumstances surrounding its execution and conditions and motives of parties shown by recitals in contract or matters in evidence should be taken into consideration in order that true intent of parties may be ascertained. Retsloff v. Smith (1926) 79 CA 443, 249P 886. (Civil Code 1641.)

Civil Code Section 1647 provides that contracts may be explained by circumstances. A contract may be explained by reference to the circumstances under

which it was made, and the matter to which it relates.

The Decision Was Arbitrary

The Appellate Court systematically misstated the facts and record.

The rules of interpretation of contract and deeds are extremely flexible, and depend upon a correct statement of the facts for their application.

The Appellate Court ignored the fact that almost one mile of the road is across federal land, and leads to the grantor's land.

The typical cases where "a right of way for a road is granted" such as Parks v. Gates, and the others, upon which the Appellate Court relies, do not apply here, and are off point.

None of the cases cited by the court

related to the granting of an undivided 1/2 interest in an existing road half of which is not even on the grantor's land. The road crosses federal land and the grantor's land, and the instrument recited that all rights in the road are vested solely in the grantor.

The first party was therefore competent to convey an interest in the road across federal land, since the road is private property.

The meaning of the term undivided 1/2 interest is well established in the law of property and always refers to the interest of a co-owner. Davis v. Davis.

The term "road" is a generic term, and has no fixed meaning. Chollar-Potosi Mining Co. v. Kennedy, 3 Nevada 861, 93 Am.Dec. 409.

The meaning of a writing can only be found by considering all the circumstances that disclose the sense in which the writer

used the words. Valdez v. Federal Mut.Ins. Co. (1969) 272 CA.2d 323, 77 Cal.Rptr 411; C.C. 1644.

Having systematically misstated the facts, the Appellate Court did not apply the pertinent rules of interpretation.

All the rules of interpretation must be considered, and each given its proper effect when necessary, in order to arrive at the true effect of an instrument. California Bldg. Co. v. Halle (1947) 80 CA.2d 229, 181 P2d 404.

The rules the Court did apply were applied to misstated facts.

Although the circumstances were thoroughly documented, they were systematically misstated by the Court.

The rules of interpretation are always applied to specific facts. Misstate the facts, and the result is changed. In this way property can be taken for the State - and the Constitution defeated by arbitrary

decree.

As Justice Blackmun stated, expressing the unanimous opinion of the United States Supreme Court, in the case of Webb's Fabulous Pharmacies, Inc. v. Beckwith (1980) 449 U.S. 155, 66 L.Ed. 2d 358, 101 S.Ct. 446, "Neither the Florida legislature by statute, nor the Florida courts by judicial decree [may take private property without just compensation], [or] To put it another way: a State, by ipse dixit, may not transform private property into public property without compensation, ...This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That clause stands as a shield against the arbitrary use of governmental power." The Fifth and Fourteenth Amendments were held to be violated.

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Reason For Granting The Writ

I.

California Courts

Ignored Federal Law

The California courts have refused to give effect to a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287, which held that "The rule of lost grant to land applies to claims held adversely to the sovereign." The California courts refused to apply federal law to the interpretation of a 1908 Agreement granting rights and interests in a privately owned road built in 1902 across .7 miles of federally owned land which is now the Angeles National Forest. The federal question is governing. The road crosses both federal land and the privately owned land of the 1908 grantor, which is now owned by a subdivision of the state of California, the Los Angeles Community College District. The determination of the interest across the

federal portion of the road is determining as to the intention of the parties, and will determine the interpretation of the agreement as a whole, since the instrument grants an undivided 1/2 interest in the road to (across federal land) and on (across the land of the grantor).

Whether state court gave proper effect to a decree of federal court embraced federal question. Crescent City Live Stock Co. v. Butchers Union Slaughterhouse (1887) 120 U.S. 141, 30 L.Ed. 614 7 S.Ct. 472.

California statutes and decisions as applied by the California Courts are in conflict with U.S. law and with a 1947 decision of the U.S. Supreme Court, U.S. v. Fullard-Leo. The United States Supreme Court may exercise revising power on all questions arising under Constitution and law of Union, and its decisions are final and

obligatory upon all other judicial tribunals, state or federal, and while state tribunal has right to consider any such questions and to determine them, its decision must conform to that of the Supreme Court, or corrective power may be exercised. Green v. Lessee of Neal (1832) 31 U.S. 291, 8 L.Ed. 402.

II.

The Dedication Of The District's Property Took Petitioner's Property Without Compensation

An enactment of the state of California is in conflict with the U.S. Constitution, and has resulted in the taking of private property without compensation and in violation of Due Process.

The District at trial claimed that

the District land had been dedicated as an "ecological reserve" by an ad hoc group of teachers who were permitted to use the District property. This group was formed about 1972, at the time the District ceased leasing its land to private parties for profit.

This committee claimed that the road was a part of the ecological reserve, and objected to the Johnsons use of the road for profit.

This committee also objected to the Johnsons maintenance of the road in any manner which the committee deemed incompatible with the ecological reserve.

The trial court ruled that the District property is an ecological reserve.

The court disregarded the Johnsons' rights pursuant to the 1908 Agreement for the benefit of the ecological reserve.

Any enactment, from whatever source originating, to which state gives force of

law, is statute of state within meaning of statue conferring on Supreme Court of United States jurisdiction to review decision of state court upholding state statute as against contention that it is repugnant to Constitution, treaties or laws of United States. William v. Bruffy (1878) 96 U.S. 176, 24L.Ed. 716; Reinman v. Little Rock (1915) 237 U.S. 171, 59 L.Ed. 900, 35 S.Ct. 511.

III

The Decision Was Arbitrary and Capricious

The decision of the California courts was arbitrary, unfounded, contrary to the evidence and applicable law, and was a violation of Due Process whereby the State took private property without compensation in violation of the provisions of Amendment XIV and Amendment V of the U.S.

Constitution.

The State Appellate Court based its decision on systematic misstatements of the record, and then arbitrarily misapplied the rules of interpretation to the obfuscated record and rationalized the arbitrary decisions which took property for the benefit of the ecological reserve.

It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdictions of this court by putting forward nonfederal grounds of decision which are without any fair or substantial support. See Wolfe v. North Carolina (1960) 364 U.S. 177, 185, 80 S.Ct. 1482, 4 L.Ed. 2d 1650.

Where state courts fail to pass on evidence or make findings of fact because under their respective views the facts referred to were immaterial, the United

States Supreme Court is not relieved from its duty to examine the evidence for purpose of determining what facts reasonably and presumably would be found therefrom by state court. Brooklyn Sav. Bank v. O'Neil (1945) 324 U.S. 697, 89 L.Ed. 1296, 65 S.Ct. 895.

Where an asserted federal right turns upon a determination of question of situs, it is the province of the Supreme Court to analyze the facts in order to apply the law and thus to ascertain whether the conclusion of the state court is supported by the evidence. Johnson Oil Refining Co. v. Oklahoma (1933) 290 U.S. 158, 78 L.Ed. 238, 54 S.Ct. 152.

A state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions or fact. Brooklyn Sav. Bank v. O'Neil (1945) 324 U.S. 697, 703; Merchants Nat. Bank v. Richmond (1921)

256 U.S. 635, 638; Carlson v. Washington (1914) 234 U.S. 103, 105.

The exercise of the judicial power to interpret deeds and fashion remedies is state action subject to constitutional limitation. Shelley v. Kramer, (1948) 334 U.S. 1, 68 S.Ct. 68 S.Ct. 836.

The state ground, to be adequate, must also be a tenable one. In other words, Supreme Court review cannot be evaded by reliance on a state ground so certainly unfounded that it properly may be regarded as essentially arbitrary. Enterprise Irrigation District v. Canal Co. (1917) 243 U.S. 157, 164; and see Ward v. Love County (1920) 253 U.S. 17, 22; Postal Tel.Cable Co. v. Newport (1918) 247 U.S. 464, 475-476; Lawrence v. State Tax Commission (1932) 286 U.S. 276, 282.

Is the law of the land relative to the interpretation of contracts, deeds and covenants so unclear that the California courts cannot apply the rules of interpretation in an objective and consistent manner?

Each case may have a different set of facts, but this does not justify an arbitrary and capricious application of the rules of interpretation by the California courts, which have demonstrated a grievous inability and disinclination to apply the rules of interpretation in a uniform and consistent manner.

IV.

The State Court Lacked Subject Matter Jurisdiction

The District, pursuant to the 1908 Agreement, and a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947) 67

S.Ct. 1287, is a co-owner of a road which crosses the Angeles National Forest, and the District is obligated to share the costs of maintenance and to keep the road in repair pursuant to covenants in the Agreement.

The District cross-complained for quiet title, taking a position contrary to the terms of the Agreement, and claimed that the Forest Service owned the road, but did not name the Forest Service or the U.S. Government as an indispensable party.

An indispensable party is one whose absence prevents the court from rendering any effective judgment between the parties because subject matter jurisdiction is lost.

V.

California Courts Must Apply The U.S. Constitution

State courts have a duty to uphold and enforce the Constitution. State courts

should know that when they sanction an evasion of the Due Process provisions by the State, that the corrective power of the Supreme Court is available to enforce the Constitutional prohibition against arbitrary decisions.

State courts bear equal responsibility with federal courts to guard and protect rights secured by Constitution of the United States. Horn v. Ocheskey, D.C.N.M. (1974), 378 F.Supp. 1280.

When the state courts will not protect property rights guaranteed by the Constitution, and acquiesce in the violation of these rights by the state, only the corrective action of the Supreme Court can make the Constitution the law of the land.

Conclusion

For these various reasons, this petition for certiorari should be granted. Petitioners Jack and Linda Johnson ask the Court to grant the writ, and upon further consideration, to reverse the judgment.

April 27, 1993

Respectfully submitted,

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92-1731

Supreme Court, U.S.
FILED
APR 28 1993
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IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1992

No.

JACK P. JOHNSON, LINDA JOHNSON,

Petitioners,

v.

LOS ANGELES COMMUNITY
COLLEGE DISTRICT,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

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Contents

Written Opinion Of Court Of Appeal.... 1

Oral Opinion Of Trial Court..... 42

Order Denying Rehearing..... 55

Order Denying Review By The California Supreme Court..... 56

Order Granting Extension of Time..... 57

Constitutions, Statutes and Rules Cited..... 58

Excerpt From Opening Brief In The Court of Appeal..... 67

Excerpt From Amended Complaint Filed On January 10, 1985 by Johnsons Against School District..... 68

Excerpt From Second Amended Complaint Filed May 14, 1985 by Johnsons Against School District..... 70

Excerpt From Respondent School District's Brief in the California Court of Appeal..... 75

Second and Third Causes of Action of Second Amended Complaint..... 75

Road Agreement..... 79

Excerpts From Reporter's Transcripts

Claude Rucker: 1RT 112:4-19 87

Testimony of Laurel Woodley,
District Gold Creek ad hoc
committee..... 89

TESTIMONY OF FLOYD BODLE,
Johnson's predecessor in interest..... 89

CLARENCE JOE BROWN, commercial
user of Bodle Ranch..... 93

DENNIS LEE, L.A.C.C. District
custodian of records..... 94

JACK JOHNSON, Zoned Uses of property 98

Exhibits In Evidence..... 100

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF

THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JACK P. JOHNSON, et al.,	)	
	)	
Plaintiff's, Cross-Defendants, and Appellants,	)	No. B050096
	)	(Super.
v.	)	Ct. No.
	)	NCC
LOS ANGELES COMMUNITY COLLEGE DISTRICT,	)	25594B)
	)	
Defendant, Cross-Complainant and Appellant.	)	
	)	

APPEALS from a judgment of the Superior Court of Los Angeles County. Thomas C. Murphy, Judge. Affirmed.

William J. Cleary, Jr. for Plaintiffs, Cross-Defendants and Appellants.

Veatch, Carlson, Grogan & Nelson and Pamela Benben for Defendant, Cross-Complainant and Appellant.

This dispute between neighbors concerns title to a private road through defendant's property to plaintiffs' property, and plaintiffs' right to remove trees, vegetation, slopes, and soil from defendant's property. Plaintiffs Jack Johnson and Linda Johnson, who believe they hold an undivided ownership interest in their neighbor's private road, filed suit against defendant Los Angeles Community College District (District) for quiet title, declaratory and injunctive relief, and general and punitive damages. The District, which claims the Johnsons are entitled only to an easement for access to their property, cross-complained against the Johnsons for similar relief. After a court trial, the trial court quieted title in the District, subject to the Johnsons' easement for non-commercial ingress and ingress, but denied the District damages for the lost trees, vegetation, slopes and soil. Both the

Johnsons and the District appealed. We affirm the judgment.

BACKGROUND

The parties' respective adjoining parcels contain several hundred wilderness acres which are surrounded by United States Forest Service land in the Little Tujunga area. The District, which acquired its property in 1950, has kept its land in a natural state as an ecological preserve used by students and faculty. The Johnsons, who acquired their property in 1975, wish to rent their land for commercial ventures such as motion picture filming and camping.[1/]

---

1. We do not intend to imply that the Johnsons' property is zoned for such uses, or that the Johnsons have complied with applicable license or permit regulations, if any. The record is silent on these points. Despite the contrary indications in the Johnsons' brief, the trial court excluded the Johnsons' evidence of zoning ordinances, exhibit 8. Since the Johnsons do not contend exhibit 8 was erroneously excluded, we do not address the propriety of that ruling.

The Johnsons' property would be landlocked were it not for the private road which crosses the District's property and intersects the public highway. The lower portion of this private road was built in 1902 by the District's predecessor, R.S. Watt, whose house was at the end of his gated, locked, and private road, and which was then about 200 to 300 yards below the Johnsons' property line.

The upper portion of the private road was built in 1908, when Watt gave the Johnsons' predecessors, Edward D. Silent and Frank J. Thomas, and their heirs, successors, and assigns, a permanent, undivided one-half interest in the private road and a right of way over Watt's land along the course of the private road. In return, Silent and Thomas paid Watt $250 plus $300 for extending the road from Watt's house to their property line. Silent and

Thomas agreed to bear their pro rata share of the work or costs necessary to maintain the road and gate.

Until the Johnsons acquired their property in 1975, the private dirt road remained about 10 to 12 feet wide, and was not used for commercial purposes. The road was used mainly by the owners of the two parcels and their guests, including the District's students who travelled to the District's property by bus.

The Johnsons, who contend the 1908 recorded agreement gave them an undivided ownership interest in the private road, unilaterally widened the road to accommodate their increased and changed use of the property. Motion picture filming crews brought large trucks up the road, and as many as 500 people would go to the Johnsons' property at a time, in as many as 200 to 300 cars. Without the District's permission, the Johnsons moved, widened and elevated the

road by cutting back the slope of the canyon wall, excavating the stream channel throughout the canyon, and removing most of the trees along the stream. The District, which claims the 1908 agreement gave the Johnsons only an easement for ingress and egress, threatened to obtain an injunction against the Johnsons. The Johnsons responded by filing suit for quiet title, declaratory and injunctive relief, and general and punitive damages. The District then cross-complained for similar relief.

The trial court granted the District a preliminary injunction prohibiting the Johnsons from excavating and widening the road, and from using the road for commercial purposes. Following a court trial, the trial court determined the Johnsons had an easement rather than an ownership interest in the road, and quieted title to the road in the District subject to the Johnsons' easement. The trial court determined the

scope of the Johnsons' easement was for private, noncommercial use only, and permanently enjoined the Johnsons from altering the course of the road, using the road for commercial purposes, or repairing the road without the District's prior written consent. The trial court also ordered the parties to share the cost of surveying the exact location of their mutual boundary to resolve their ongoing dispute on that point.

The trial court rejected the District's claim for money damages of $1.5 million. The District, although conceding that many of its trees were damaged by natural causes, contended that at least a third of its trees (about 60) were unnecessarily cut down by the Johnsons. The Johnsons, on the other hand, contended that all of the District's trees were damaged by natural causes, and several witnesses so testified. The trial court concluded there

was insufficient evidence that the Johnsons, rather than the area's three recent natural disasters (the 1975 Angeles Forest Fire, and the 1978 and 1983 floods) and the current California drought, were responsible for damaging the trees on the District's property.

ISSUES

The Johnsons contend (I) the 1908 agreement gave them an undivided one-half ownership interest in the road as a matter of law. Alternatively, they contend (II) the scope of their easement includes all reasonable uses, including commercial use.

The District contends (III) the trial court erred in refusing to award damages.

DISCUSSION

I

We conclude that the 1908 agreement gave the Johnsons an easement rather than

fee simple title to the private road across the District's property.

Where the interpretation of a contract is derived solely from its terms, the question is one of law and the appellate court makes its own independent interpretation. (Medical Operations Management, Inc. v. National Health Laboratories, Inc. (1986) 176 Cal.App.3d 886, 891.)

The 1908 agreement stated in relevant part: "This Agreement, made this 21st day of July, 1908, by and between R. S. Watt... and Edward D. Silent and Frank J. Thomas... Whereas, said [Silent and Thomas] are, in common with others, the owners of a certain parcel of land situated in the said county of Los Angeles, being known as [legal description omitted], and

"Whereas, the old road that led to the above described land is still open for travel, and a certain portion has fallen

into disuse through neglect, and

"Whereas, [Watt] did build and construct a new piece of road in 1902, and has used, maintained and kept the same in repair from time to time, and has maintained the gate on the same, it being a private road to and on certain lands owned by [Watt], located in [legal description omitted], and all rights in said road are vested solely in [Watt], and

"Whereas, [Silent and Thomas] despite to obtain a permanent interest in said road, and a permanent right of way over [Watt's] land... for themselves and co-owners[,] their heirs and assigns forever, under the following conditions and stipulations,

"Now, therefore, this is to witness: That [Watt], in consideration of the promises and agreements on the part of [Silent and Thomas], and in further consideration of the sum of $250. cash to be

paid by [Silent and Thomas] to [Watt], receipt whereof is hereby acknowledged, and in further consideration of the promises herein contained on the part of [Silent and Thomas], [Watt] does hereby grant, convey and assign to [Silent and Thomas] and their co-owners, their heirs, executors, administrators and assigns, owners of the above described land, an[] undivided One Half (1/2) interest in and to the said road, so built and constricted by [Watt] in 1902, and also right of way over the land of [Watt], along the line of said road so constructed in 1902, and over and along the road to be constructed by [Watt] over his said lands and the lands of [Silent and Thomas], which said road to be so constructed shall follow the line as now laid our and upon which work has been done, Together with the right at all times of ingress and egress over and along the same for the purpose of passage to and from the

lands owned by [Silent and Thomas] and their co-owners, with the right at all times to enter into and upon the said road, make repairs thereon and to maintain and assist in the maintenance of the same.

"[Silent and Thomas] further agree to expend [$300] on said road so built by [Watt], and designated 'Watt Grade' and running to a point opposite the house of [Watt], in making cuts and fills, particularly at the upper portion of said grade, in cutting off corners, improving grade and widening same, leaving no portion narrower than nine feet, and to finish the finished portion thereof in conformity with the grade already established.

"It is mutually agreed that each of the parties hereto, shall, from time to time, when needed, and from year to year, do their portion or pro rata of the work or costs thereof necessary for the maintenance of said piece of road, and that the same

will be kept in repair..."

The issue is whether the 1908 agreement conveyed a fee simple title or an easement. A striking point on first reading is the absence of the word "easement." One could say that if the parties had intended to convey an easement, they would have so stated. However, a review of the cases construing similar language in older grant deeds leads us to conclude the parties to the 1908 agreement intended to transfer an easement rather than an ownership interest in land. (See Parks v. Gates (1921) 186 Cal.151, 154 ("[A] direct grant of a 'right of way' for a road carries with it only an easement in the land."); People v. Thompson (1954) 43 Cal.2d 13, 18-19 (only an easement was conveyed by a deed which granted a right of way); City of Glendora v. Faus (1957) 148 Cal.App.2d 920, 923-926 (only an easement was conveyed by a deed which granted property for railroad purposes only);

Moakley v. Los Angeles Pacific Ry. co. (1934) 139 Cal.App. 421, 423-425 (only an easement was conveyed by a deed which granted a right of way); Marlin v. Robinson (1932) 123 Cal.App. 373, 375-377 (only an easement was conveyed by a deed which granted land for the purpose of a private road); but see Basin Oil Company v. City of Inglewood (1954) 125 Cal.App.2d 661, 666 (fee simple title was conveyed by a grant of land for a public street or right of way).)

The dominant purpose of the parties as expressed in the 1908 agreement was to transfer the "right at all times of ingress and egress over and along [Watt's road] for the purpose of passage to and from the lands owned by [Silent and Thomas] and their co-owners." Although the grant of a right of way "may refer to the land owned in unlimited fee by the owner of the road or railroad passing over it, or...to denote an easement only" (City of Glendora v. Faus,

supra 148 Cal.App.2d at p. 926; People v. Thompson, supra, 43 Cal.2d at pp. 19-21), the 1908 agreement does not disclose an intention to transfer ownership of the road. Since the right of way in this case is expressly described as being "over" Watt's land and along the line of the road, we conclude the phrase "right of way" was used to describe an easement rather than a fee simple title, and reject the Johnsons' contrary assertion.

We further disagree with the Johnsons' contention that the following language in the 1908 agreement evidences an intent to transfer ownership of land: "[Watt] does hereby grant, convey and assign...an[] undivided One Half (1/2) interest in and to the said road...." (Emphasis added.) The Johnsons state: "Ordinarily, the use of the word 'grant' by itself is sufficient to create an estate in fee simple absolute. Schlageter v. Cutting[]

(1931) 116 Cal.[]App. 489, [] 498. See also, Civil Code Section 1105 which creates a presumption of fee simple."

Schlageter v. Cutting, supra, 116 Cal.App. at page 498, however, is not on point. The court in Schlageter found the challenged deed "conveyed absolutely whatever right or claim [the grantors] may have had to the premises and in addition thereto quitclaimed their defeasible right." (Ibid.) In this case, however, Watt did not grant whatever right or claim he had to the road; Watt simply conveyed an undivided one-half interest in the road, together with a right of way over Watt's land along the line of the road. Rather than conveying all of his interest in the road, Watt expressly limited the right of way to an easement only and reserved his joint "right to...use [the] road..."

Similarly, Civil Code section 1105 does not aid us in deciding whether Watt

conveyed a fee simple title. That section merely provides that if we find the 1908 agreement was a grant of real property, we must presume that a fee simple was intended unless "it appears from the grant that a lesser estate was intended." (Civ. Code, section 1105.) But since we do not believe the parties intended to transfer title to the land, we do not find section 1105's presumption to be applicable.

Because the 1908 agreement grants an interest in a road for ingress and egress, we believe the contracting parties were referring to an easement for access. The granting of an interest in a road and a right of way over the land of another is consistent with such an easement. "An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other's land. [Citations]. [new para:] An easement is an interest in the land of

another; hence, though it is an interest in land, it is not an estate in land. [Citation]." (4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, Section 434, p. 614.) "An interest in land is not presumptively an estate in land: the term estate is confined to those interests in land which are or may become possessary. [Citations]. ...[A]n easement is a nonpossessary interest in real property. [Citation.]" (Darr v. Lone Star Industries, Inc. (1979) 94 Cal.App.3d 895, 901.)

The Johnsons further rely on the fact that the 1908 agreement conveyed an undivided one-half interest in the road. The Johnsons point out that an undivided interest is the "very essence of tenancy in common." (Davis v. Davis (1963) 222 Cal.App.2d 691, 693.) Accordingly, the Johnsons conclude that Watt "severed the title to the road from the title to the rest of [Watt's] land, and [Watt] and [Silent and

Thompson became] co-owners of the road in fee. Reed v. Spicer (1864) 27 C[al.] 57."

We are not convinced. Although in Reed v. Spicer, supra 27 Cal. 57, the California Supreme Court concluded that a deed which transferred a right of way to a mining ditch conveyed interest in the ditch itself rather than a mere easement (id. at pp. 63-64), the court reached a contrary result in Parks v. Gates, supra, 186 Cal. at page 154 and People v. Thompson, supra, 43 Cal.2d at pages 18-19. As stated by the appellate court in Basin Oil Co. v. City of Inglewood, supra, 125 Cal.App.2d at page 664: "Analysis of cases on this subject makes it abundantly clear that it is impossible to lay down an invariable and universal rule of construction. [Citation.) Every transaction must be considered individually."

While the Johnsons construe the words "undivided One-Half" interest to

indicate a fee simple title held in tenancy in common, we may disregard those words if the rest of the document indicates the parties nevertheless intended to pass only an easement. "If an intention to pass particular title is disclosed, the court will give effect to such intention notwithstanding inaccuracy of expression or inaptness of the words used. [Citation.]" (Basin Oil Co. v. City of Inglewood, supra, 125 Cal.App.2d at p. 663.)

When the granting clause in a deed is so broadly worded as to raise the issue of whether the language creates an easement of a complete title in fee, the courts will read the deed as a whole, and ascertain whether the grantor intended to limit the estate named in the granting clause. The question of "whether the particular language creates an easement or a complete title in fee...is raised frequently where the granting clause of the deed is broad enough

to suggest a fee, but the habendum clause contains qualifying words. Whether these words merely declare the purpose of the grant (consistent with fee) or limit the estate conveyed is a question of intent, and the strict common law rule that the granting clause prevails over the habendum clause is no longer followed. 'The cardinal requirement in the construction of deeds now, as in the construction of other instruments, is that the intention of the parties as gathered from the whole instrument must govern. ...Thus if it should appear from such consideration that the grantor intended by the habendum clause to restrict or limit or enlarge the estate named in the granting clause to restrict or limit or enlarge the estate named in the granting clause, the habendum may prevail.'" (4 Witkin, Summary of Cal. Law, supra, section 440, p. 621, citing Basin Oil Co. v. City of Inglewood, supra, 125 Cal.App.2d at

p. 663.)

Even if we were to consider the granting clause in the 1908 agreement ambiguous, the agreement as a whole reflects that the intention of the parties was to grant an easement for access over Watt's land along the line of the road. The agreement specifically stated that the purpose was to provide "passage to and from the lands owned by [Silent and Thomas] and their co-owners," without prejudice to Watt's right of joint use of the road.

We conclude, as a matter of law, that the 1908 agreement gave the Johnsons an easement rather than an ownership interest in the private road across the District's property.

II

The Johnsons contend the trial court erroneously limited the scope of their easement to noncommercial uses. We note

that the only commercial uses mentioned by the Johnsons at trial had significantly increased traffic on the road (i.e., motion picture filming and camping). With this context in mind, we affirm the trial court's determination.

We begin with the language of the 1908 agreement, because "[t]he language of the grant determines the scope of the easement. [Citations]. Hence, a clear and specific grant for a particular use is decisive.... [new para:] Whether a use is unduly burdensome depends upon the terms of the grant and the circumstances. While normal future uses are within the reasonable contemplation of the parties and therefore permissible, uncontemplated abnormal uses, which greatly increase the burden, are not. [Citations.]" (4 Witkin, Summary of Cal. Law, supra, section 444, pp. 624-625.)

The relevant portions of the 1908 agreement specified that the road was a

"private road" with a locked gate which had previously been maintained by Watt alone, but would thereafter be mutually maintained. The agreement specified that both parties would keep duplicate keys to the gate. And, as previously stated, the agreement explained the purpose of the right of way was to provide "passage to and from [the country road to] the lands owned by [Silent and Thomas] and their co-owners."

Based on this language alone, we would affirm the trial court's determination as a matter of law. But even if we were to deem the contractual language inadequate to establish the private nature of the road, the extrinsic evidence amply supports the trial court's finding.

"Acts of the parties, subsequent to the execution of the contract and before any controversy has arisen as to its effect, may be looked to in determining the meaning. The conduct of the parties may be, in

effect, a practical construction thereof, for they are probably least likely to be mistaken as to the intent." (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contract, section 689, p. 622.) "A special rule governs the situation where an easement, e.g., a right of way across a piece of land, is granted in general terms, without precise specification of its location or the manner of enjoyment. If the owner of the easement makes a particular use with acquiescence of the other party, the use fixes the limits of the right, and it cannot thereafter be changed against objection of the owner of the servient tenement. [Citations.]" (4 Witkin, Summary of Cal. Law, supra, section 445, p. 626.)

As previously indicated, prior to the Johnsons' acquisition of their property in 1975, the road remained a narrow, dirt road that was infrequently travelled by anyone other than the owners of the two

parcels and their guests.

Arthur and Robert Watt, the District's predecessors, used their land for fruit trees, bee hives, and hunting.

Floyd Bodle, who owned what is now the Johnsons' property from about 1932 (when he purchased it from his father, who had bought the property in 1922) to 1975 (when he sold it to the Johnsons) used his land for quiet weekend recreation and relaxation. When Bodle bought his property, he agreed with the Watts that he would maintain the upper portion of the road (about 200 to 300 yards running through a narrow canyon along a stream bed from the Watts' house to Bodle's property line), and the Watts would maintain the lower portion of the road (from the highway to the Watts' house).

According to Bodle's testimony, the upper portion of the road was the most troublesome to maintain because it went through a narrow canyon along a stream bed

that needed to be cleared of rocks and boulders after a flood. When Bodle had to use big machinery and dynamite to clear the channel after a flood, he did so with the Watts's knowledge. The Watts, on the other hand, could keep the lower road clear with only hand tools. Bodle moved the upper road from one side of the canyon to the other depending on where the flood washed out the road. Bodle scraped rock, gravel and silt out of the stream bed to repair the upper road after a flood.

Although Bodle could not recall ever asking the District for permission to repair the road, an internal District memorandum dated October 5, 1953, indicated he had done so. The memorandum stated in relevant part: "Mr. Floyd Bodle...who has an easement to cross our Gold Creek site is desirous of improving the access road. I accompanied him to the site on September 28, 1953 to see what his plan was in relation to existing

roads, trees, and stream courses.

Although I was originally opposed to his plan, I must now reverse this position. As he outlined his proposals, I am convinced we stand to gain a permanent well-graded road up the canyon. This will be of benefit to us in any future development that may be proposed. He plans to spend $2000.00 or more and is just as desirous as we are of maintaining a beautiful, natural landscape in the area. [new para.] ...Mr. Bodle is awaiting word from us, as he would like to complete the work prior to the heavy rains."

The District, which acquired its property from the Watts in 1950, maintained its land in a natural state as an ecological preserve for its student and faculty. The District has not found it necessary to widen the road, which was between 10 and 12 feet wide, in order to accommodate the school buses which bring students to the property.

When the Johnsons acquired Bodle's

property in 1975, they with the interest of leasing it for motion picture filming and camping. The Johnsons, believing that the 1908 agreement gave them an undivided ownership interest in the private road, admittedly ignored the District's protests and widened, elevated and moved portions of the road, cut down most of the trees along the road, bulldozed slopes in the upper canyon, and excavated the stream bed to make the road suitable for large commercial vehicles. The Johnsons widened the road from about 10 to 12 feet to 30 feet in most areas of the upper canyon and up to 60 feet in some areas.

The District presented evidence that the Johnsons' commercial activities significantly increased the traffic along the private road through the District's property. As many as several hundred people a day were visiting the Johnsons' property. Hundreds of vehicles came up the road at a

time. The removal of trees and vegetation, and the cutting of the toes [sic] of the canyon's slopes have increased the threat of further erosion and landslides along the District's property. The loss of most, if not all, of the tree canopy along the stream has altered the climate in portions of the District's property and threatens to transform portions of the area into a desert. The elevation of portions of the road above the stream bed without any safety barriers has increased the District's exposure to liability.

The Johnsons contend that because their changed use of their land is within the normal and reasonable development of their property, the accompanying changed or increased use of the private road is also reasonable. (Citing Norris v. State of California ex rel. Dept. Pub. Wks. (1968) 261 Cal.App.2d 41, 49.) However, the record supports the trial court's determination

that the Johnsons' easement and right of way along the road, which was described in the 1908 agreement as a private, gated and locked road, and which was used by both parties' predecessors as a private road for mostly non-commercial purposes, was restricted by grant and by conduct to noncommercial uses only. While the Johnsons state that "the zoning regulations are presumptive evidence of reasonable use, and ...this ordinance allows campgrounds and film shooting," the zoning regulations were not admitted at trial.

The Johnsons' reliance on Laux v. Freed (1960) 53 Cal.2d 512, 525, is misplaced. The parties in that case were formerly married, and upon dissolution of their business partnership they divided (by the toss of a coin) range land which they had owned together and used for personal and commercial hunting. The husband, who won the coin toss, chose the northern portion

for himself and gave the wife a general right of way to reach the southern half. The husband later tried to prevent the wife from using her right of way in the manner the couple had used it during their partnership. In rejecting the husband's attempt to limit the scope of the right of way, the California Supreme Court made the following statement upon which the Johnsons' rely: "'A grant in general terms of an easement of way will ordinarily be construed as creating a general right of way capable of use in connection with the dominant tenement for all reasonable purposes...' ...'A grant of a right of way unrestricted as to purpose is a grant of a way to be used for any purpose whatever....'[Citations.]" (Ibid.)

We distinguish Laux, in which the division of the property created the necessity for the right of way. (See 4 Witkin, Summary of Cal.Law, supra, section

459, pp. 636-637.) In this case, the Johnsons' property did not become landlocked because of a division of property. The easement was created by agreement to provide Silent and Thomas access to the county road, and this was the manner in which the easement was used until 1975. The purpose of the easement and the manner of its use limit its scope, which "cannot thereafter be changed against objection of the owner of the servient tenement. [Citations.]" (Id. at section 445, p, 626.) The record supports the District's claim that the Johnsons changed the manner in which the private road had been used prior to 1975, and significantly increased the burden on the District's property, despite the District's repeated objections.

Similarly, we distinguish Francheschi v. Kuntz (1967) 253 Cal.App.2d 1041, which the Johnsons also cite in their brief. In Francheschi there was no evidence

of a changed use of the right of way or an increased burden on the servient tenement.

We conclude the trial court's interpretation of the 1908 agreement to preclude the Johnsons from changing and increasing the use of the private road in the manner described at trial is amply supported by the record.

III

The District contends on cross-appeal that it presented sufficient evidence of trespass and damages.

The District sought treble damages of about $1.5 million under Civil Code section 3346, subdivision (a), which provides in relevant part: "For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times as much as would compensate for the actual detriment, except that where the trespass was casual or

involuntary, or that the defendant in any action brought under this section had probable cause to believe that the land on which the trespass was committed was his own land or the land of the person in whose service or by whose direction the act was done, the measure of damages shall be twice the sum as would compensate for actual detriment...."

The trial court refused to award damages, stating that the District had failed to prove that the Johnsons were at fault for the loss of trees on the District's property. The Johnsons had a right to maintain the road, and it was conceded that the fire and droughts which hit the property caused damage to the trees. The trial court stated: "Now I'm not at all sure that the actions of the Johnsons contributed one hundred p[er]cent to the damages claimed.... There has been a change in the weather, for want of a better word,

in this community since 1902. [new para.] You talk about the [tree] canopy. You talk about reverting to the desert. All you had to do last night was look at the weather report if you wanted to find that we are five inches below normal for the rain, average rainfall in this state at this time. That's surely not the fault of the Johnsons....[new para.]... [new para.] I'm not sure that, by the preponderance of the evidence on the cross-complaint that trees...were cut down by Johnson...."

Having reviewed the record, we are not persuaded the evidence is insufficient to support the trial court's determination. Mark Newton, one of the District's witnesses, admitted that most of the trees were damaged by natural causes, and that it was impossible to say what exactly which trees were damaged by nature and which were not. Ronald Bigelow, another District witness, testified that when he surveyed the

District's property for cut trees, he could not tell when the trees were cut or why. Bigelow admitted that some of the cut trees may have been dead trees. Moreover, Bigelow testified that a large pine trees. Moreover, Bigelow testified that a large pone tree which he believed to be healthy despite being blackened in the 1975 fire, suddenly fell over onto the roof of the District's building, much to Bigelow's surprise.

The Johnsons presented witnesses who testified that all of the trees on the District's property were damaged by the 1975 fire and 1978 and 1983 floods. Joe Brown, who owns property below the District's property near the country road, testified that the 1978 flood washed away all of the trees in the creek channel and destroyed the District's road. Mr. Johnson testified that his removal of the remaining trees along the channel was necessary to protect the road

and did not cause the devastation and flooding in 1983, because most of the trees had been washed away in the 1978 flood.

Although the District presented a survey listing 60 or so trees which its experts believed were unnecessarily cut down, the trial court was not required to accept that survey at face value. There was substantial evidence that the three natural disasters had caused heavy damage to the trees, and the trial court was entitled to conclude there was insufficient evidence to determine which trees, if any, were unnecessarily removed by the Johnsons.

In effect, the District is asking us to reweigh the conflicting evidence. A "'reviewing court is without power to substitute its decisions for those of the trial court.' ...'In resolving the issue of sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most

favorably to the prevailing party [citations] and in support of the judgment.... "in brief, the appellate court ordinarily looks only at the evidence supporting the successful party, and disregards the contrary showing." [Citation.] All conflicts, therefore must be resolved in favor of the respondent.' [Citations.]" (Campbell v. Southern Pacific Co. (1978) 22 Cal.3d 51, 60.) "'When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.' [Citations.]" (Foreman & Clark Corp. v. Fallon (1971) 3 Cal.3d 875, 881.)

"Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit

is sufficient for proof of any fact." (Evid. Code, section 411; see 3 Witkin, Cal. Evidence (3d ed. 1986) Introduction of Evidence at Trial, sections 1750-1756, pp. 1704-1711.) "'Although an appellate court will not uphold a judgment or verdict based upon evidence inherently improbable, testimony which merely discloses unusual circumstances does not come within that category. [Citation.] To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the

facts upon which a determination depends. [Citation.]' [Citations.]" (People v. Thornton (1974) 11 Cal.3d 738, 754, disapproved on other grounds in People v. Flannel (1979) 25 Cal.3d 668, 684, fn. 12.)

DISPOSITION

We affirm the judgment. Each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

ARANDA, J.*

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*Assigned by the Chairman of the Judicial Council.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

BURBANK JUDICIAL DISTRICT

JACK P. JOHNSON, et al., Plaintiff's, Cross-Defendants, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Defendant, Cross-Complainant	Case No. NCC 25594B Oral Opinion Of Trial court

By Hon. Thomas C. Murphy, Judge, Superior Court:

THE COURT: All right. Then let the record show that the Court has made a study of the exhibits over the weekend and again last night, that the Court has had an opportunity to review the trial briefs that have been filed and the declarations in support of some of the motions, that the matter has been before the court for some seven days and before the district for about five years.

We have proceeded on the second amended complaint for plaintiffs and on the cross-complaint for the Los Angeles Community College District.

With reference to what the Court is saying at this time, it will be construed as a statement of decision. The person who prevails will prepare a statement of decision to reflect the Court's thinking and prepare judgment that would be supportive of it.

With reference to the second amended complaint, the Court finds that there is no evidence as to interference with economic advantage, damages for injuries to property right, intentional infliction of emotional distress, negligent infliction of emotional distress, and any punitive damages based on the second amended complaint.

The issues that the Court will discuss when it gets to them is declaratory relief, quiet title, preliminary and

permanent injunction.

With reference to the cross-complaint, the Court will direct its attention to the quiet title, the question of trespass, declaratory relief, determinative injunction, and again I must discuss again damages, but the Court is not inclined on the evidence that it has heard from either side to consider punitive damages.

With reference to quiet title, I don't think the case will ever settle in the minds of the people, although it will settle with the judgment of the Court, as to where the boundaries are. As late as yesterday, there was discussion as to whether or not barrels which have been moved from time to time outline the boundary on the part of the property that is not even involved in this particular case. So the Court is inclined to, and will order that a survey be made by a competent licensed surveyor of the

property, particularly in connection with the well and the underground reservoir, so that, once and for all, the Johnsons and the District will have an outline of their property and know exactly what's within those boundaries. That must be done within the next ninety days. The expense will be borne equally by the parties at the present time.

With reference to the causes of action which both parties are maintaining, the first cause of action in the cross-complaint for quiet title, with reference to the quiet title first cause of action in the second amended complaint, the Court has heard the evidence. The Court knows that the intentions of the parties in any agreement are important. I've heard both those intentions. I've heard the evidence from both sides. I've heard the evidence of what took place.

The question is, is there a fee

title to that road? The court finds no. The court finds that there is an easement. Both the Johnsons and the Community College have a right to cross each other's property. They have an easement of ingress and egress within the scope of things as they existed.

Now I know we can't limit people to a 1902 traffic pattern, but at the same time when you have evidence from the parties that there was no commercial intent intended in this, it was more or less a place for the Bodles and others to go and rest and relax, and if they could get some honey from the wild bees and make, as he referred to, a dollar, he would do so. But this does not permit either the community -- nor does it permit you to open a road for public use, turning them into camp sites, turning them into weekend resorts. It has to be kept in the position that it was in the wild-life period. It may hurt some people. That's fine. But it will go along with that

particular consent of the parties.

With reference to the quiet title, Gold Creek Ecological Reserve is going to be used as an instructional, training and natural science by the students and faculty. That's their purpose and any change in purpose on that would have to be effected in some manner.

The question of -- I want to keep these in balance as we go along -- trespass. The Court is not convinced that the issue of trespass has been carried. I know trespass is sort of an intentional type of action. I don't think the Johnsons intentionally did anything. I think they believed that they had a right to proceed as they were proceeding, so much so that they have pursued this case through a rather long and tortuous litigation career without attorneys.

The question of preliminary and permanent injunction will be addressed and

it will sort of be directed to both sides, because your neighbors and you are going to live together and you are going to maintain, I assume, a relationship under the Court's supervision if necessary that will maintain and keep the peace.

So, having ruled on trespass, I will then move on to the question that is in my mind as to the permanent injunction or declaratory relief which we will base it on. The Court is going to declare the right of the parties and will set forth in more detail in just a few minutes after I can get to my notes.

All right, I'm going to, inasmuch as I have ruled that this is not a fee title and that the Johnsons have got nothing more than an easement for ingress and egress, that, with all the right to cross that road, I am going to say that the judgment will be for the cross-complainant, and find that they are the owner in fee simple of the

property described; that the right-of-way easement across it is for the sole purpose of ingress and egress to the adjacent property as more fully set forth.

I am going to declare that the cross-complainants own all of the property described in Paragraph 2 of the first cause of action, again subject to a private and noncommercial right of way and easement to cross the road for the sole purpose of ingress and egress.

I am going to declare that the cross-defendants and each of them or any of the parties do not own any of the property described in Paragraph 2 of the first cause of action.

I am going to make a declaration that the cross-defendants may not make improvements without prior notice in writing to the district.

You must cooperate. There must be a meeting or a declaration that the cross-

defendants will not engage in maintenance and repair without prior written notice, and they are not entitled to alter the course and width of the easement. And from the evidence presented to this Court, the guidelines will not be less than 8 feet and not more than 18, from the evidence that has been presented to me, period.

This easement will not be opened by either side to the public or for use of the easement for commercial purposes other than as confined to students, period.

And we must address the question of damages. Now I'm not sure at all that the actions of the Johnsons contributed one hundred precent [sic] to the damages claimed. I have remarked many times during the trial that this Court is stupid but sometimes not dumb. There has been a change in the weather, for want of a better word, in this community since 1902.

You talk about canopy. You talk

about reverting to the desert. All you had to do last night was look at the weather report if you wanted to find that we are five inches below normal for the rain, average rainfall in this state at this particular time. That's surely not the fault of the Johnsons. It's affecting the whole -- we are reverting back to the desert, at least eighty per cent of it. We have grave concerns on a national level. The environmentalists have great concerns, and it was addressed by President Bush as to what steps are going to be taken to relieve this effect.

From what I read, perhaps we're getting to a point where the ozone layer is being penetrated and we're losing our atmosphere. I don't think the Johnsons are a hundred percent at fault for that.

I'm not sure that, by the preponderance of the evidence on the cross-complaint that trees that were cut were cut

by Johnson. Somebody cut them. I'm a suspicious man. I would think so, but I'm not going to assess anyone a million dollars to refurnish with trees in this particular area.

I'm going to say, with all due respect to all of the parties, that there is going to have to be a cooperation and a community between you from here on in. We're going to have a survey to outline the boundaries. You are going to have to live with the fact that you have an easement and not a direct right to do what you want, when you want, where you want with the alleged road. It will be within limits of 8 to 18 feet. You will not take it upon yourselves, either one or both of you, to go on other people's property to maintain or to repair, without first having conferred, meet and confer and have written agreement such that it will or will not be done or it will not be done. And you are permanently enjoined

from doing otherwise.

I am not going to assess damages. Some might be warranted, but not by the preponderance of the evidence that I am satisfied myself as to the nature and the extent of them, and it would be unfair to assess a million one plus $275 million [sic] for this type of thing.

There will be no further damage, no further cutting, no further repairs, no further movement, period.

You, young lady, will prepare the statement of decision and prepare the judgment to support it.

The prevailing party will get their costs as evidenced by a cost bill.

I thank you for a very interesting case and a very interesting seven days.

I apologize to you that this district took five years to try this case. It should have never taken that long, but I shall not comment on it other than the fact

that, no matter what you say, you've now had your day in court.

Thank you.

MS. BENBEN: Thank you, Your Honor.

(Proceedings in the above-entitled matter were concluded.)

OFFICE OF THE CLERK

COURT OF APPEAL

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 11/19/92

William J. Cleary, Jr.
1853 1/2 N. Canyon Drive
Los Angeles, CA. 90028

RE: Johnson, Jack P.
vs.
Los Angeles Community College District
2 Civil B050096
Los Angeles NO. NCC25594B

THE COURT:

Petition for rehearing denied.

Second Appellate District, Division One,
No. B050096

S016472

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

JACK P. JOHNSON Et Al., Appellants

v.

LOS ANGELES COMMUNITY COLLEGE DISTRICT,
Appellant

Petition for review DENIED.
The request for an order directing publication of the opinion is denied.

LUCAS

Chief Justice

SUPREME COURT OF THE UNITED STATES

No. A-692

Jack P. Johnson, et al.,

Petitioners

v.

Los Angeles Community College District, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby extended to and including April 29, 1993.

/s/ Sandra D. O'Connor
Associate Justice of the Supreme
Court of the United States

Dated this 15th
day of March, 1993.

Constitutions, Statutes and Rules Cited

1.) California Civil Code Section 1647:

Contracts explained by circumstance. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

2.) California Civil Code Section 1641:

Effect to be given to every part of contract. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

3.) California Civil Code Section 1644:

Words to be understood in usual sense. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which

case the latter must be followed.

4.) California Civil Code Section 1638: Interpretation to be ascertained from language. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

5.) California Civil Code Section 1636: Contracts, how to be interpreted. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same as ascertainable and lawful.

6.) California Civil Code Section 1070: Irreconcilable provisions. If several parts of a grant are absolutely irreconcilable, the former part prevails.

7.) California Civil Code Section 1105: When fee simple title is presumed to pass. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

8.) California Civil Code Section 1069: Interpretation against grantor. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

9.) California Civil Code Section 1104: What easements pass with property. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the

same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

10.) California Civil Code Section 685: Interest in common. An interest in common is one owned by several persons, not in joint ownership or partnership.

11.) California Civil Code Section 3522: One who grants a thing is presumed to grant also whatever is essential to its use.

12.) Article I, Section 10, U.S. Constitution. 1. No state shall enter into any treaty, alliance, or confederation: grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a

tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts, or grant any title of nobility.

13.) Amendment V, U.S. Constitution. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without compensation.

14.) Article III, Sections 1 and 2. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during the good behavior, and shall at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to

controversies between two or more States; between a State and citizens of another State; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects. (This section is modified by Amendment XI).

15.) Article VI, U.S. Constitution.

... 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding....

16.) Amendment XIV, U.S. Constitution.

1....; [N]or shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

17.) California Constitution, Article I, Section 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

18.) California Code of Civil Procedure Section 1060. Any person interested under a deed, will or other written instrument, or under a contract, or who

desires a declaration of his rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action in the superior court...including a determination of any question of construction or validity arising under such instrument or contract.

Excerpts From Johnsons' Opening Brief In The Court of Appeal

Page 24: "For the District to argue a dedication of its property the effect of which is to eliminate the lawful uses of the Johnsons' property is to effectively condemn the Johnson property without paying just compensation."

Page 27: "Conclusion" - "And, finally, it must be said that what the District is effectively doing is limiting the Johnsons' use of their 160 acres to a single family residence when the pertinent zoning codes allow campgrounds and filming locations. The effect is both retroactive and confiscatory."

Excerpt From Amended Complaint Filed

On January 10, 1985 by Johnsons

Against School District

13. Defendants are also attempting to violate plaintiff's property rights and rights incidental to ownership of plaintiff's property.

14. Defendants conspired to breach the contract and property rights of plaintiffs. Defendants have attempted to compromise plaintiff's rights in the road and rights related to the road several times and in a numbers of ways. Defendants are intimately familiar with the circumstances, events, numerous meetings and confrontations connected with a conspiracy to breach the contract and interfere with the rights of plaintiffs. Defendants breach of contract was not accidental or inadvertent, but by studied design, deliberate, and willful. Defendants breach of contract was not

confined to a single act or event, but to several related acts and events, involving several individuals. Defendants have superior knowledge of the facts concerning the conspiracy than plaintiff has. Defendants were deliberately negligent in maintaining the road and related areas. The Los Angeles Community College District knowingly allowed unauthorized persons to harass, intimidate, obstruct, interfere with and damage plaintiffs. Unauthorized persons and the Gold Creek Ad Hoc Committee were allowed to interfere with plaintiff's use and maintenance of plaintiff's road and property. Defendants mailed threatening letters to plaintiffs demanding that plaintiffs acquiesce to defendant's terms and threatening litigation. Defendant's violations of plaintiff's rights are not isolated acts, but part of a series and pattern of related acts and confrontations, all of which are well known to defendants,

and some of which are better known to defendants than to plaintiffs.

Excerpt From Second Amended Complaint Filed May 14, 1985 by Johnsons Against School District

CT 73:

9. Plaintiff's are informed and believe that from 1929 to 1975, plaintiff's predecessor in title, Floyd M. Bodle, and those coming to plaintiffs' land when owned by Bodle similarly openly and notoriously used the road for ingress to and egress from the land, and that Bodle repaired and maintained the road and cleared the road [] the creek of debris, foliage and other things for access and travel over the road.

15. Defendants unreasonably

interfered with or obstructed plaintiffs' use of the road by encouraging, permitting and allowing defendants' invitees on its land to park their vehicles on the road, by threatening to narrow and reroute the road, to close the road to plaintiffs and those coming to plaintiffs' land, and to prevent plaintiffs from repairing or maintaining the road from clearing the road and the creek from debris, foliage and other things that interfere with or obstruct plaintiffs' use of or ingress and egress over the road, by its campus police trespassing on plaintiffs' land and harassing, bullying and intimidation plaintiffs' guests and invitees, and by trespassing by helicopter which flew over plaintiff's land at low altitude and which frightened, harassed and annoyed plaintiffs, their guests and invitees.

16. Plaintiffs' land has been and

is used as a personal residence and commercially for meetings and gatherings, and for filming of commercials.

17. Unless and until restrained by order of this court, defendants' interference with or obstruction of plaintiffs' rights in and use, repair and maintenance of the road and the creek will cause great and irreparable injury to plaintiffs, in that, closure or narrowing of the road will prevent plaintiffs' use of and access to their land and will endanger plaintiffs' land and property and prevent ingress to and egress from plaintiffs' land by fire trucks in case of fire and by other trucks and vehicles which need to reach plaintiffs' land in case of other emergency or disaster, and will prevent such ingress and egress by trucks and vehicles which come to plaintiffs' land for commercial purposes with resultant loss of income, and

plaintiffs will be unable to repair and maintain road and to clear it and the creek of debris, foliage and other things, and plaintiffs' property will depreciate in value in amount according to proof at trial.

20. Plaintiff timely served a notice of claim for money damages on defendants who rejected the claim and filed this action within 6 months of said rejection, and plaintiffs complied with the Tort Claims Act, Government Code Section 900, et. seq.

21. Within 3 years past, an economic relationship between plaintiffs and religious organizations and the film makers who used plaintiffs' land for religious meetings and retreats and for making films, which relationship had the probability of future economic benefit to plaintiffs.

22. Defendants were aware of the existence of such relationship.

23. The acts of the defendants were intentionally and deliberately designed to disrupt the relationship which defendants disrupted.

26. As a proximate result of defendants' conduct, within 3 years past, plaintiffs were prevented from using, repairing and maintaining the road and lost earnings and time from their business to maintain ingress and egress over the road to plaintiffs' damage in an amount according to proof at trial.

Excerpt From Respondent School District's Brief in the California Court of Appeal

"I. Statement Of The Case ...As one leaves the public road and travels onto "Gold Creek Road," the first part of the road traverses property owned by the United States Forest Service. In fact, both parcels of property in question are surrounded by National Forest lands. After leaving United States Forest Service property, one encounters the District's western boundary..." (District's Brief, p.4.)

CT 77:

SECOND CAUSE OF ACTION:

5. For a declaration that plaintiffs have an undivided 1/2 ownership interest in

Gold Creek Road, a permanent right of way in the road, appurtenant and prescriptive easements, the right to make repairs upon and maintain the road, and the right to clear the road and the right to clear the road and the creek of debris, foliage and other things that interfere with or obstruct plaintiffs' use of the road for ingress and egress, that defendants have no right to close and narrow the road nor to diminish or interfere with plaintiffs' rights in the use, repair and maintenance of the road, and that plaintiffs and defendants are under a duty to share reasonable costs of repair and maintenance of the road;

THIRD CAUSE OF ACTION:

6. For a preliminary and permanent injunction restraining and enjoining defendants, and each of them, their officers, administrators, trustees, agents, servants, employees and representatives, all

persons upon defendant's land, by invitation, license or permission, and all other persons acting in concert with or on behalf of defendants, or any of them, from committing or engaging, directly or indirectly, in any of the following acts in regard to Gold Creek Road and Gold Creek:

a. from closing the road;

b. from narrowing the road;

c. from preventing or in any way interfering with or obstructing plaintiffs from:

i. repairing and maintaining the road;

ii. clearing the road and the creek of debris, foliage or any other objects or things.

d. from parking vehicles on the road;

e. from trespassing on plaintiffs' land by helicopter, by foot, by vehicle or any other means;

f. from annoying, harassing or molesting plaintiffs and persons travelling

on the road to and from plaintiffs' property;

g. from preventing or impeding ingress and egress over the road by plaintiffs and persons travelling the road to and from plaintiffs' land;

h. from otherwise interfering with or obstructing plaintiffs' use and rights in the land;

Road Agreement

(CT Exhibit 2)

AGREEMENT

Dated July 21, 1908.

Between

R.S. WATT, First Party

and

EDWARD D. SILENT and
FRANK J. THOMAS
Second Parties.

****

(Recorded in Book 3440 Page 115 of Deeds.

****

This Agreement, made this 21st day of July, 1908, by and between R.S. Watt, first party, of Los Angeles County, California, and Edward D. Silent and Frank J. Thomas, of the same place, parties of the second part, Whereas, said parties of the second part are, in common with others, the owners of a certain parcel of land situated in the said county of Los Angeles, being known as the East One Half (E.1/2) of the South-West Quarter (S.W. 1/4) and the North One Half (N.1/2) of the South-East Quarter of Section Twenty Four (24) in Township Three (3) North, Range Fourteen (14) West, San Bernardino Meridian, and

Whereas, the old road that led to the above described land is still open for travel, and a certain portion has fallen into disuse through neglect, and

Whereas, said first party did build and construct a new piece of road in 1902, and has used, maintained and kept the same

in repair from time to time, and has maintained the gate on the same, it being a private road to and on certain lands owned by said first party, located in Section Twenty Three (23) Twenty Four (23) and Twenty Six (26) of the above designated Township, and all rights in said road are vested solely in said first party, and

Whereas, the said second parties desire to obtain a permanent interest in said road, and a permanent right of way over the said land of said first party for themselves and co-owners their heirs and assigns forever, under the following conditions and stipulations,

Now, therefore, this is to witness: That the said first party, in consideration of the promises and agreements on the part of said second parties, and in further consideration of the sum of $250. cash to be paid by said second parties to said first party, receipt whereof is hereby

acknowledged, and in further consideration of the promises herein contained on the part of said second parties, the said first party does hereby grant, convey and assign to said second parties and their co-owners, their heirs, executors, administrators and assigns, owners of the above described land, and undivided One Half (1/2) interest in and to the said road, so built and constructed by said first party in 1902, and also right of way over the land of the said first party of the first part, along the line of said road so constructed in 1902, and over and along the road to be constructed by said first party over his said lands and the lands of the said second parties, which said road to be so constructed shall follow the line laid as now laid out out and upon which work has been done, Together with the right at all times of ingress and egress over and along the same for the purpose of passage to and from the lands owned by said second

parties and their co-owners, with the right at all times to enter into and upon the said road, make repairs thereon and to maintain and assist in the maintenance of the same.

Said second parties further agree to expend the sum of Three Hundred Dollars ($300.00) on said road so built by said first party and designated "Watt Grade" and running to a point opposite the house of said first party, in making cuts and fills, particularly at the upper portion of said grade, in cutting off corners, improving grade and widening same, leaving ro portion narrower than nine feet, and to finish the [un]finished portion thereof in conformity with the grade already established.

It is mutually agreed that each of the parties hereto, shall, from time to time, when needed, and from year to year, do their portion or pro rata of the work or costs thereof necessary for the maintenance of said piece of road, and that the same

will be kept in repair.

It is further agreed that the parties hereto shall have duplicate keys to the lock on the gate heretofore maintained at the bottom of said Watt Grade by the party of the first part, and that the parties hereto shall mutually cooperate in the maintenance of said gate.

It is further agreed that the parties hereto will mutually cooperate in the establishment if a code of signals, or the maintenance of safety signals, in order to render the use of said road as safe as the circumstances will permit.

It is further agreed and understood that the party of the first part, by the granting herein contained, has in nowise deprived himself of the right to the use of said road in any manner whatsoever, but that he shall have the right to the use of the same jointly with the parties hereto.

It is further agreed that said first

party grants the right and privilege to said second parties to erect and maintain a shed or store-room at or on the point known as "Alder Flats" on said first party's land in the canyon situated below the gate heretofore built by said first party in said canyon, and that said second parties shall have the right to establish and maintain a fence and gate below Alder Flats, said first party to have the right of ingress and egress thru the same.

It is further agreed that said first party shall have the right to enter into and upon the land of said second parties for a distance of at least sixty feet where the land of said second parties crosses said canyon, to lift any water to which he may be entitled, and nothing herein shall be considered directly or indirectly as a waiver on the part of said first party of any rights to water or the use of water now claimed by him under water location or

appropriation heretofore made by him.

In Witness Whereof, the parties hereto have hereunder set their hands the day and year first above written.

R.S. Watt

Edward D. Silent

Frank J. Thomas

State of California) ss
County of Los Angeles) On this 22 day of July in the year One Thousand, Nine Hundred and Eight A D before me Irving M Walker a Notary Public in and for said county, residing therein, duly commissioned and sworn personally appeared R B Watt, Edward D. Silent and Frank J. Thomas personally known to me to be the person whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the

day and year in this certificate first above written.

(Notarial Seal) Irving M. Walker, Notary Public in and for the County of Los Angeles, State of California.

Excerpts From Reporter's Transcripts

Claude Rucker: 1RT 112:4-19

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. You previously stated that routine maintenance needed to be done on this road and this environment. Is that because nature would reclaim the road if this is not done?

A. That's correct.

Q. And with that process of reclaiming the road, would that involve the creek eroding one side, and material coming down the hill and building up on the other side?

A. That's correct.

Q. And the maintaining of the road is a constant -- something of a battle between striking a balance with the forces of nature and the need to maintain a road in that environment?

A. Whenever the road is a canyon, that's all you can do.

JACK JOHNSON CROSS: 2RT 306

Q. Now, Mr. Johnson, when did you become aware, if ever, that the District utilized its property as an ecological preserve?

A. I have never become aware that they do that. I don't admit that they do that.

Q. But you are aware that students are brought to the property by the District for nature walks?

A. That doesn't make it an ecological reserve.

Testimony of Laurel Woodley, District Gold Creek ad hoc committee, Cross Examination: 2RT-497: 10-16

Q. The road from the Brown Ranch to and on your property, has that ever been oiled with liquid ashpalt?

A. Yes, it has.

Q. Prior to my coming to the area?

A. Yes, it has. Pierce College did it.

Q. And after my coming; correct?

A. Correct.

TESTIMONY OF FLOYD BODLE, Johnson's predecessor in interest (direct examination) 1RT 209: 21-28; 210:1-18:

Q. Did you know the Watts, your neighbors, the property the road went through, which is now the District property?

A. Pardon me?

Q. Did you know the Watts, the Watt brothers, who were the owners of the property?

A. Oh, very well. Naturally, yes.

Q. How did the Watts earn their living?

A. They had pear trees, apple trees and a large number of bee hives.

Q. Would you estimate the number of fruit trees that they had?

A. Robert Watt told me at one time that they had planted about 2,000 fruit trees on their property.

Q. How did they earn their living?

A. Selling apples, pears, and whatever the bees produced.

Q. Did they earn money in any other ways?

A. Only to the extent when hunting season-- as I remember it, they charged a fee to hunt on their property. How much, I can't remember. I believe they charged $5, or something like that, to hunt on their property. And they would have four or five hunters up there, particularly on opening day.

Q. Did they do this from year to year?

A. Yes.

TESTIMONY OF FLOYD BODLE, Johnson's predecessor in interest (direct examination) 1RT 217:14-22; (cross examination) 219; 28; 210:1-11:

Q. One last Question -- I am sorry. I forgot. Did you ever raise bees in large numbers on your property?

A. Well, I had at one time about 125 colonies there during the thirties and during the second world war.

Q. Did you sell that honey, and did you do that as a business or as a hobby?

A. Everything was so tough in those days that it didn't pay a whole lot, but everybody was scrounging for a dollar, and yes, I made a little money on it.

...(cross)

Q. Did you consistently utilize the property in that manner from the time you took

ownership of it, until the time you sold it?
A. Yes. The only thing, as I mentioned, in the thirties, I had 125 colonies of bees up there because things were so very, very tough in those days that they didn't earn a lot of money. But that's the only commercial thing I had up there.
Q. But the bees didn't require a whole lot of maintenance, did they?
A. Well, that's hard to say. I had a man that took care of them. Years when you were taking honey off, it required a lot of work. The rest of the time, off and on.

But there would be probably six months out of the year when there wouldn't be any maintenance at all.

FLOYD BODLE, 1RT 216:28; 217:1-5:
Q. Did you ever ask permission from Los Angeles Community College District when you wanted to do maintenance?

A. No. I never had any contact from the time they bought it, until around 20 years later, whenever it was when you bought it.

CLARENCE JOE BROWN, commercial user of Bodle Ranch (direct examination 1RT 190:2-14; 198:1-9:

Q. BY MR. JOHNSON: Did you have a business arrangement with Mr. Bodle of some kind?

A. Certainly.

Q. Would you describe that arrangement?

A. Well, yeah. In order for me to graze my cows up there, I was supposed to keep his place fenced off around his house, and stuff like that, out, in exchange for my cattle being there.

Q. Did you have your cattle there for purposes of selling them and making a profit on them?

A. Absolutely.

A. Did you give people permission to pass

through that gate to go up and down the road and proceed to the Bodle Ranch to hunt and to hike, and did they give you a consideration or favor in return?

A. Yes, sir.

THE COURT: Are you talking about the hunters and hikers giving him consideration?

MR. JOHNSON: Yes, Your Honor.

THE COURT: All right.

DENNIS LEE, L.A.C.C. District custodian of records (direct examination) 2RT 252:13-15; 252: 28; 253: 1-23:

Q. Can you tell me, based upon your review of the file, what was done with that Gold Creek property from the '50's until 1970?

A. So it was acquired back in March of 1950. And I believe the records show that beginning in 1954 through 1972, the property was leased out to a Mr. Archer and a Mr. Witzel.

And the interest of the District at that time is they did not really have the funding to, I think, use the property in its original intention. So they really wanted to have the property occupied.

And if you look at the leases that we -- that were transacted at the time, the amount of the lease was very small. But it did require that the lessee would provide a watchman, and would also maintain the water lines and, I believe, the fencing around the property.

So, really we were looking for a custodian of the property during that time period.

Q. I see. There are leases executed every so often?

A. Yes. The leases were generally for a period of every three years.

Q. And, as I understand it, there is a lease agreement in existence for the years 1954 to 1972?

A. That's correct, yes.

Q. Occupied by the same people?

A. By the same people, yes.

(cross examination) 2RT 375:19-24:

Q. You mentioned that the District leased its property. Was there a fee?

A. Yes, there was.

Q. Was the District paid some amount of money by the lessee?

A. Yes, the District was.

Dennis Lee, District Custodian of Records, Cross Examination, 2RT 371: 7-14:

Q. BY MR. JOHNSON: So that we are clear, I will repeat one question, and then move along.

Do you have any written request for permission to work on or maintain this road either from myself, or Mr. Floyd Bodle, in your records?

A. No, I do not see a request in the file

from Mr. Bodle, nor have I seen a request in writing from you, Mr. Johnson.

Dennis Lee, District Custodian of Records, Cross Examination, 2RT 371: 20-28; 372:1-3:

Q. Did the District ever pave the road with liquid asphalt, road oil?

A. Pave the road with oil?

Q. Liquid asphalt, road oil.

A. I know they have done some paving with some oil materials. Now whether it is liquid asphalt, I cannot respond to that.

Q. You would use contractors for that purpose, would you not?

A. Yes. We would contract out for that service.

Q. Professionals in that field?

A. Yes.

JACK JOHNSON (direct examination) 1RT 20: 20-28; 21:1-24:

THE WITNESS: I will restate the question.

Are some uses permitted without requisite of a Conditional Use Permit and so shown and identified as permitted uses?

The answer is: Yes.

Next question: Is campground use so permitted as a permissive use?

And the answer is: yes.

I forget the cite in there. Linda may provide that under "campground" and show what section. I think it is point 2.

MRS. JOHNSON: I am sorry. What is the question?

THE WITNESS: On the first or second page of the Zoning Code as submitted, it shows campgrounds, and it is listed under "permitted uses."

MRS. JOHNSON: Yes. That's Item No. D, Campgrounds.

THE BAILIFF: L.A. County Zoning Code, A-2,

Oak [Gold] Creek Ranch.

MRS. JOHNSON: That is Item No. 8, Your Honor, L.A. Zoning Ordinance.

THE WITNESS: Next question: Are other activities which may be engaged in for the production of profit permitted by the zoning?

The answer is: Yes.

Next question is: State briefly some of those activities.

The answer is: Motion picture, nudist camps, churches, a wide variety covering the spectrum of uses that would be permitted in A-2 5.

Next question: How many different kinds of activities are permitted of a different type, other than agriculture?

The answer: Over a hundred.

RECORDING REQUESTED BY

187

06532 963

AND WHEN RECORDED MAIL TO

JACK P. JOHNSON AND LINDA GAIL JOHNSON
909 North Normandie Ave, Apt 2
Los Angeles, California 90029

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA
JAN 20 1975 AT 8 A.M.
Recorder's Office

MAIL TAX STATEMENTS TO

above named addressee:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FEE
$3
C

Grant Deed

ADDTL. REQ. NO
TO ADD TO CO. NO.

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

The undersigned grantor(s) declare(s):
Documentary transfer tax is $ 63.25
(x) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
(x) Unincorporated area: ( ) City of _____ and

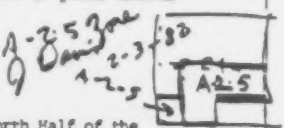
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FLOYD W. BOOLE, a widower who acquired title as a married man

hereby GRANT(S) to

JACK P. JOHNSON AND LINDA GAIL JOHNSON, Husband and wife as joint tenants

the following described real property in the County of Los Angeles, State of California:



The East Half of the Southwest quarter and the North Half of the Southeast quarter of Section 24, Township 3 North, Range 14 West, San Bernardino Meridian, in the office of the county recorder of said county.

SUBJECT TO: Covenants, conditions, restrictions, reservations, rights, rights of record, easements of record.

Dated January 13,1975

Floyd W Boole
Floyd W Boole

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On 1/13/75 before me, the undersigned, a Notary Public in and for said State, personally appeared

Floyd W. Boole

known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

OFFICIAL SEAL
AL ENGELHART
NOTARY PUBLIC CA NOTARY
LOS ANGELES COUNTY
My Commission Expires Oct. 8, 1975

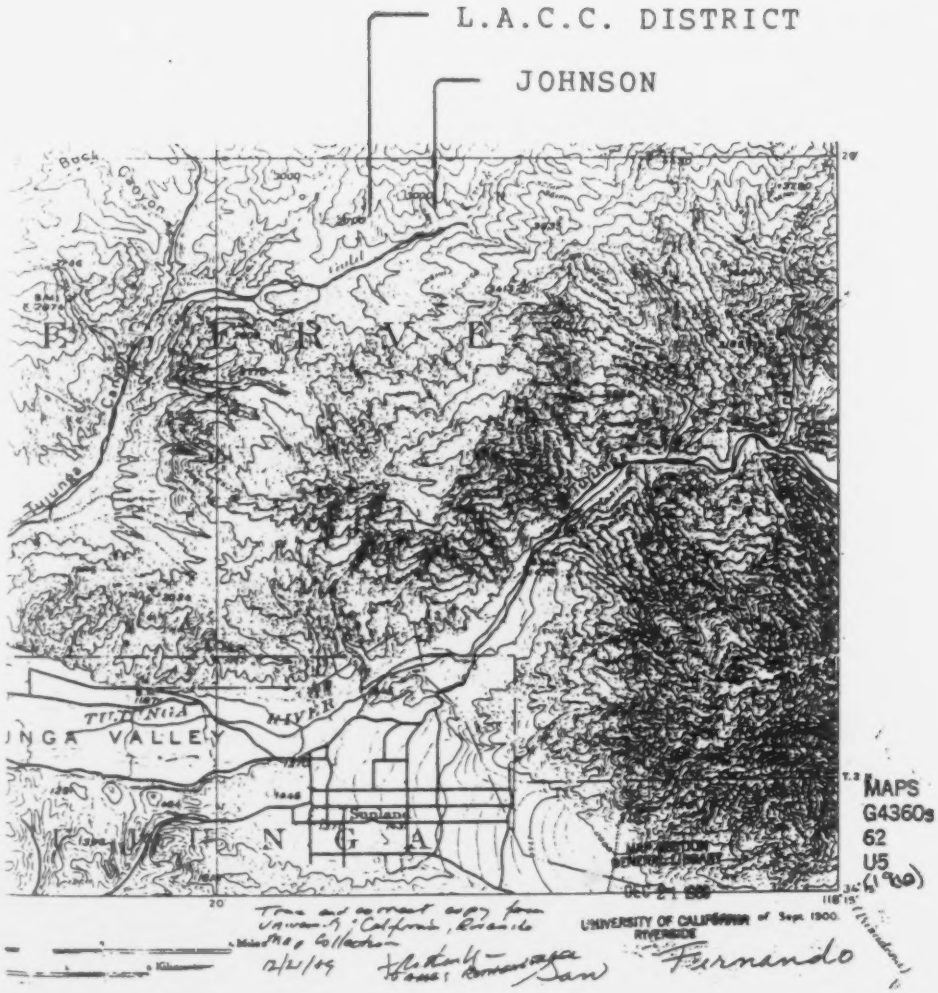
Title Order No. _____ Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1

EXHIBIT No. 1. Grant deed with zoning marked and certified by L. A. County.

BEST AVAILA



UNITED STATES GEOLOGICAL SURVEY

TOPOGRAPHIC MAP

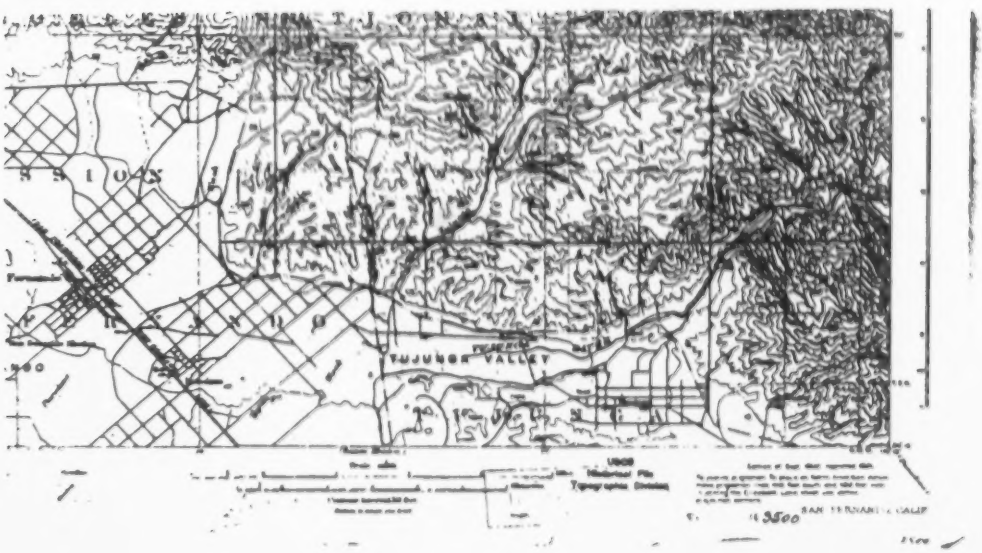
1900

SAN FERNANDO CALIFORNIA

(SUNLAND QUADRANT IN CURRENT EDITIONS)

EXHIBIT No. 40

ABLE COPY



UNITED STATES GEOLOGICAL SURVEY

TOPOGRAPHIC MAP

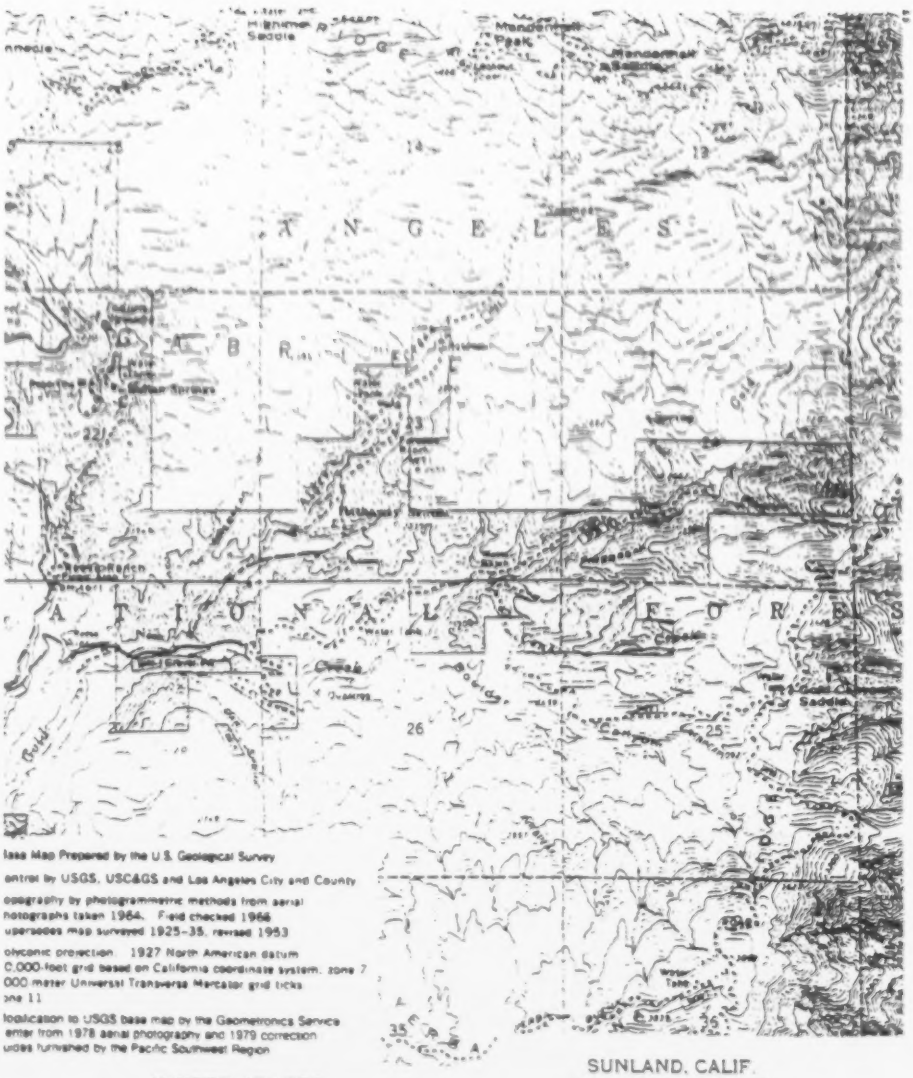
1924

SAN FERNANDO CALIFORINA

(SUNLAND QUADRANT IN CURRENT EDITIONS)

EXHIBIT No. 39

BEST AVAILA



lase Map Prepared by the U.S. Geological Survey

ontrol by USGS, USC&GS and Los Angeles City and County

opography by photogrammetric methods from aerial hotographs taken 1964. Field checked 1966 upersedes map surveyed 1925-35, revised 1953

olyconic projection. 1927 North American datum 0,000-foot grid based on California coordinate system, zone 7 000-meter Universal Transverse Mercator grid ticks one 11

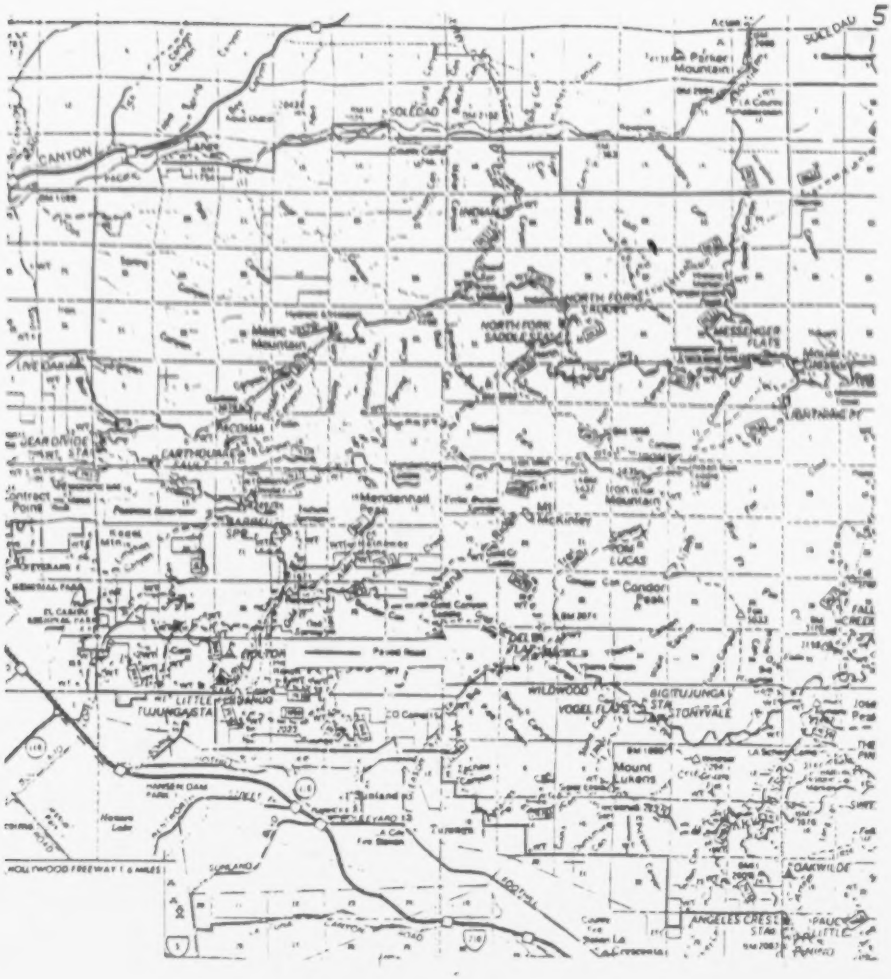
topication to USGS base map by the Geometronics Service enter from 1978 aerial photography and 1979 correction inders furnished by the Pacific Southwest Region

SUNLAND, CALIF.
SE/4 SAN FERNANDO 15' QUADRANGLE
N3415—W11815/7.5
137-4C

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
MODIFIED FOR USDA FOREST SERVICE USE

U.S. Forest Service Map Boundaries
Exhibit 5 Page 1 of 2

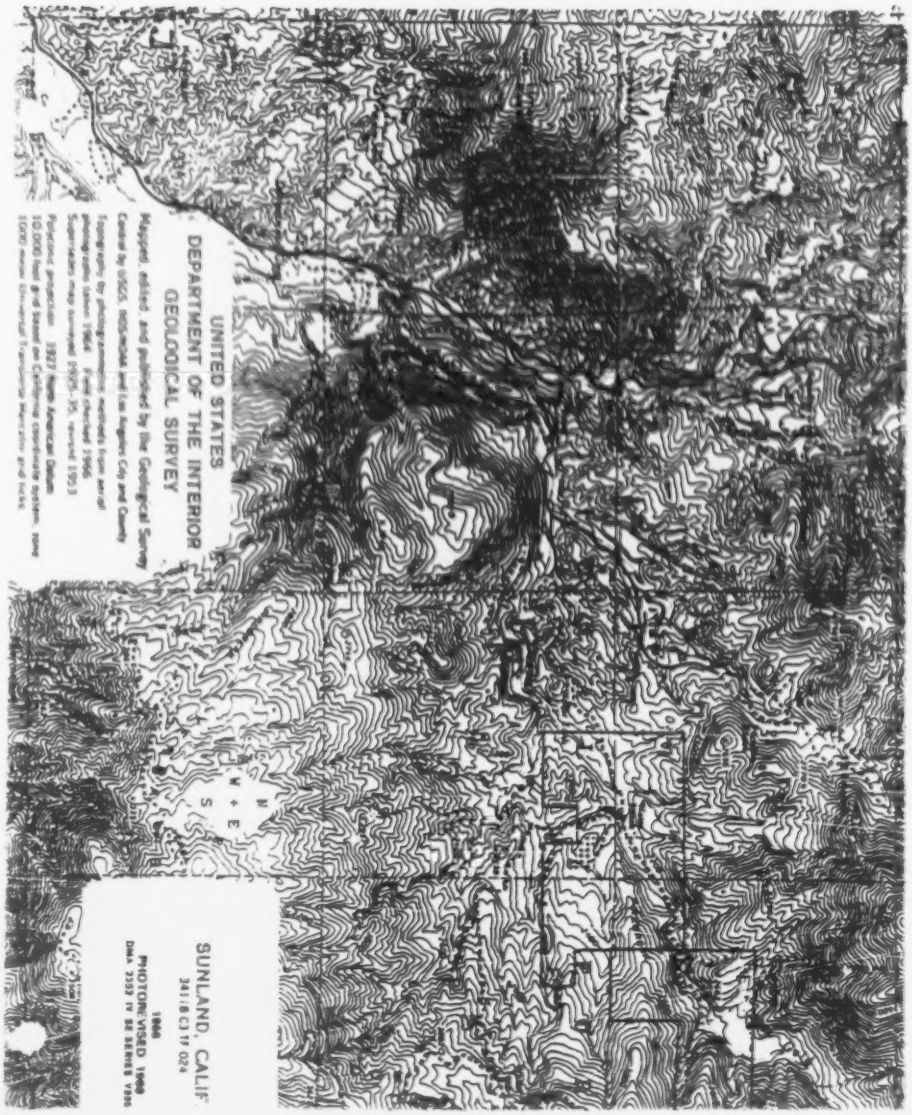
LABLE COPY



U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
R. MAX PETERSON, CHIEF

ANGELES NATIONAL FOREST
CALIFORNIA
SAN BERNARDINO MERIDIAN 1985

U.S. Forest Service Map Boundaries
Exhibit 5 Page 2 of 2

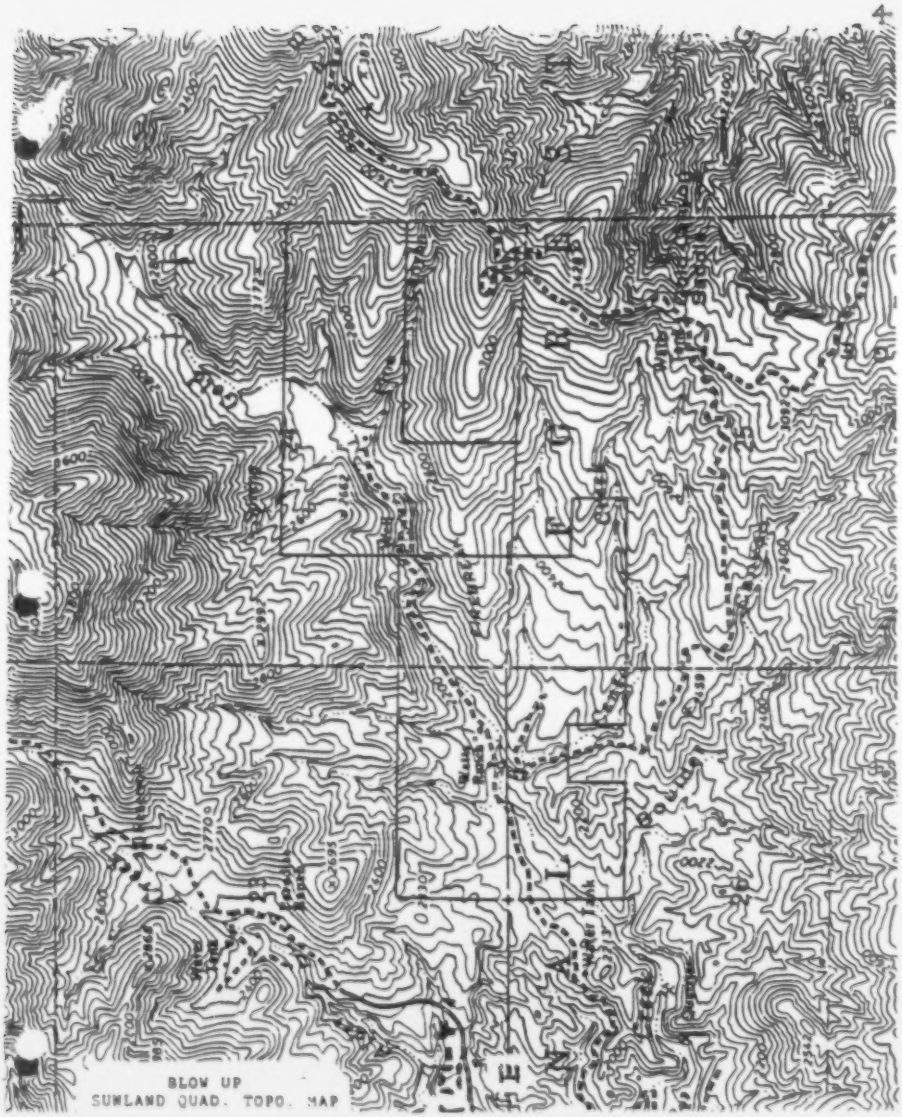


UNITED STATES GEOLOGICAL SURVEY

TOPOGRAPHIC MAP

SUNLAND QUADRANT

EXHIBIT No. 4.
page 1 of 4

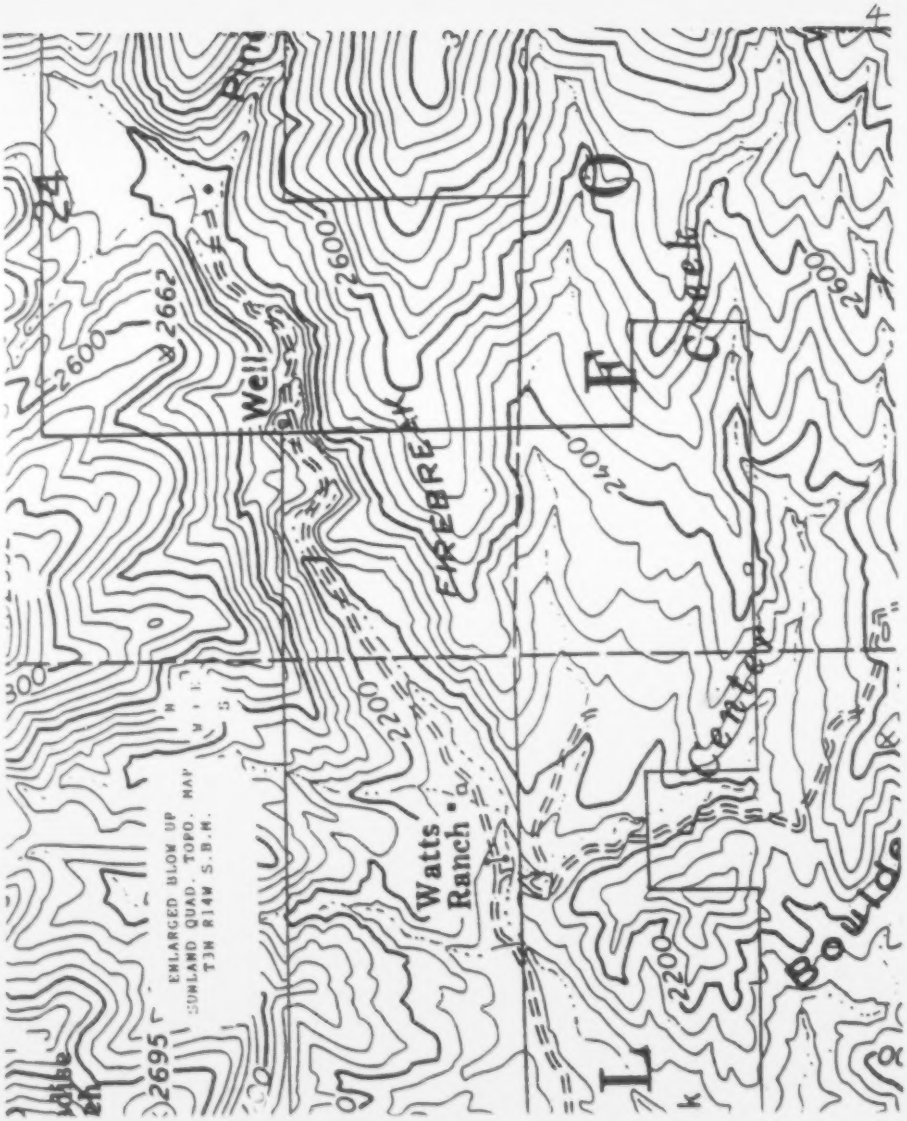


UNITED STATES GEOLOGICAL SURVEY

TOPOGRAPHIC MAP

SUNLAND QUADRANT

EXHIBIT No. 4
page 2 of 4

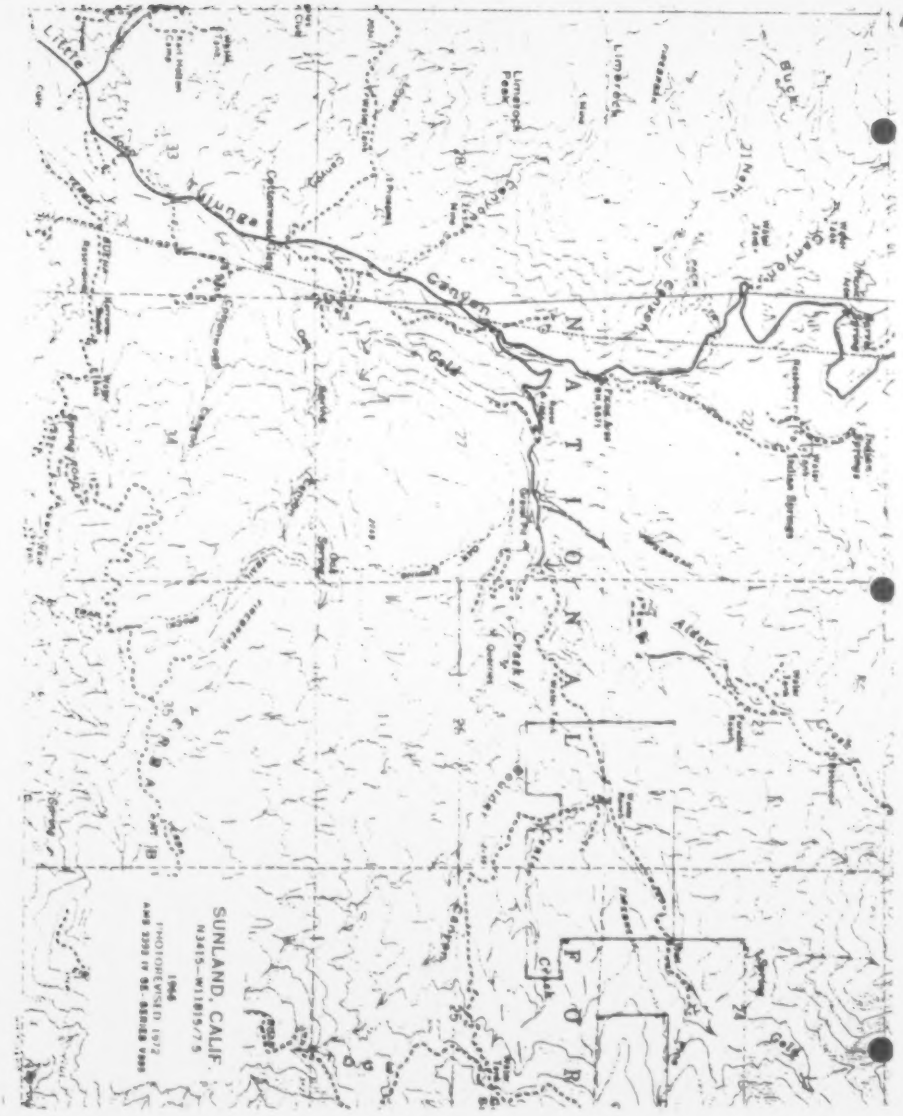


UNITED STATES GEOLOGICAL SURVEY

TOPOGRAPHIC MAP

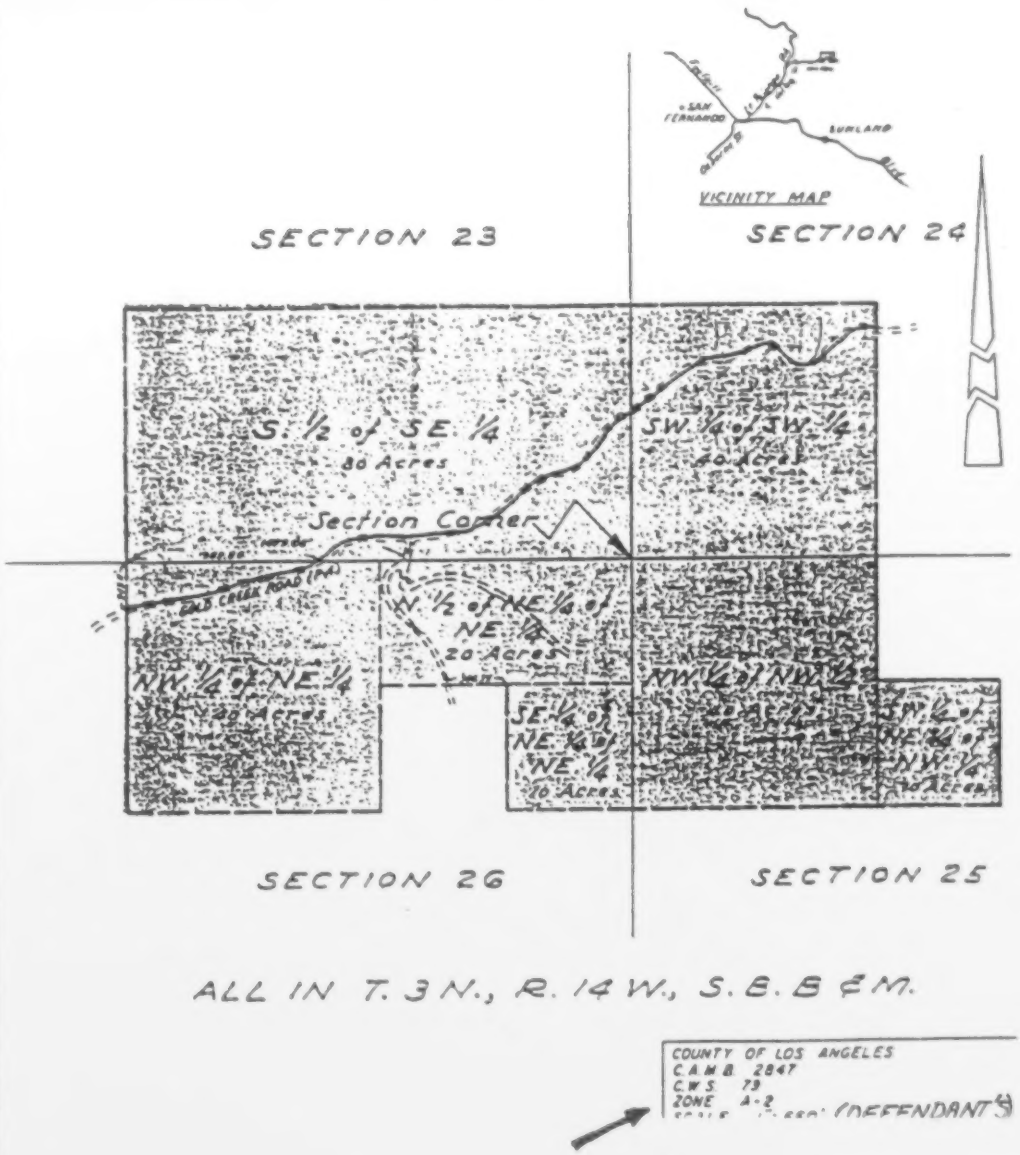
SUNLAND QUADRANT

EXHIBIT No. 4
page 3 of 4


SUNLAND, CALIF.
N3415—W11815/7.5
1965
PHOTOREVISED 1972
AMS 3250 IV SE—SERIES V855
Little
Tujunga
Canyon
Gold
Alder
Creek
Canyon
Limekiln
Peak
Limekiln
Spring
Canyon
Big
Tujunga
Canyon
Road
Indian
Springs
Spring
Creek
Gold
Spring
Canyon
Gold
Spring
Canyon
Road
N A T I O N A L
F O R
Cr
Creek
Gold
Spring
Canyon
Road
Spring
Canyon
Road
Spring
Canyon
Road

6

GOLD CREEK CANYON JUNIOR COLLEGE
AGRICULTURE AND YOUTH SERVICES SITE



MAP OF L.A.C.C. DISTRICT PROPERTY

FROM COUNTY ACCESSORS MAP BOOK

EXHIBIT No. 6